



The EU Dual Approach to Security and Space

Twenty Years of European Policy Making

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Executive Summary

In 1992, the Maastricht Treaty established the Common Foreign and Security Policy (CFSP) and stated that one of the main objectives of the Union would be “to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the *eventual* framing of a common defence policy, which *might* in time lead to a common defence”.

The renewed interest in European security had resurfaced in the early 1980s and the Western European Union (WEU), reactivated in 1984, was playing an important role in shaping a European security identity within NATO. The end of the Cold War represented a turning point and allowed EU countries to take a first step towards integration in the fields of security and defence and, thus, towards a more active role in international politics. In the same year of the launch of the CFSP, the WEU inaugurated its Satellite Centre, as “a first step towards the final goal of implementing a European space-based observation system which would contribute to the maintenance of international peace and security”. Following the ‘revolution in military space power’ in the United States, space technology was becoming indispensable for modern warfare. The Balkans wars, and the Kosovo War in particular, further confirmed this new trend and, most of all, highlighted a growing technological gap between the United States and European countries, which was threatening the ability of the latter to collaborate on a true partnership basis and, most of all, their ability to take decisions independently. Furthermore, the acceleration of the globalisation process, on one side, and the cuts in defence spending on the other, were making competition among established space-faring nations for new markets very difficult to sustain for a fragmented European industry. American aerospace industries were restructuring and consolidating in a few big ‘primes’ and the American administration was implementing dual-use policies, which were boosting the commercialisation of space activities. Combined with the significant disparity in government spending in the sector, all of this was playing a major role in EU-US industrial competition in the field.

In the wake of the Amsterdam Treaty (which was signed in October 1997) and of the Franco-British Declaration on European Defence (December 1998), and in order to catch up on capabilities and technology, two parallel but strongly interconnected processes were launched. On one side, there was the establishment of the European Security and Defence Policy (ESDP) as the operational component of the Common Foreign and Security Policy; on the other side, defence-related industries, including space industries, were allowed to restructure and consolidate at transnational level. These two processes both combine civil and military elements. They led to the adoption of the EU ‘comprehensive’ (civil-military) approach to crisis management, on one side, and to the formation of a European aerospace and defence sector, which merges both civilian and defence production lines into two transnational system integrators (EADS and Thales Alenia Space) and promotes a technological convergence between civilian and military space activities and the launch of EU-wide space initiatives, on the other. Although budget constraints, the high costs related to the development of space assets and, most of all, the already advanced process of industrial restructuring and consolidation that some EU countries were experiencing, made possible the technological convergence and the development of dual-use space systems in those countries, it is only in 2003 that space and defence were allowed to join up at EU level. The Iraq War and “the controversy over the alleged presence of weapons of mass destruction” reinforced the resolve to keep space assets at the top of the priority list in Europe. This, combined with the expected entry into force of the Constitutional Treaty (which would provide the EU with a stronger competence in the field of security and defence and a shared competence on space), created a strong incentive to address not only civil but also military space at EU level. Furthermore, the European Security Strategy (ESS), issued at the end of that same year, formally blurred the distinction between internal security (civilian) and external security (military). Under the new, comprehensive concept of security, which endorsed and further promoted the EU comprehensive approach to crisis management, both civil and



military means were called upon to contribute to the security of Europe. This immediately affected space activities at EU level. In its "European Space Policy: "ESDP and Space"", the Council affirmed that the EU civil space programmes, Galileo and GMES, had the potential to contribute also to military crisis management. The Council made an explicit parallel between civil-military synergies in the field of crisis management and those in the use of space assets. To the EU dual approach to security corresponded a dual-use approach to space activities and technology development.

The 'global' European Space Policy (ESP), issued in 2007, responded to both the global economic challenges of the post-Cold War era and the strategic ambitions set out in the ESS. It reaffirmed what was already said by the "ESDP and Space" and confirmed that Galileo and GMES might have military users. The only significant difference consisted in the stronger tone used to address security *in* space. If the "ESDP and Space" had only hinted at possible dangers coming from too heavy reliance on space technology, the Chinese anti-satellite test of 2007 abruptly made the protection of space assets and related infrastructures a necessity. Information about the situation in space became a new priority, as was the necessity to launch an international political initiative that would restore trust and confidence among space-faring nations.

Meanwhile, after the failure in the adoption of the Constitutional Treaty, a new Treaty, generally considered a slightly different version of the Constitutional one, was signed in 2007

and started to affect space and security already before its entry into force. The so-called Lisbon Treaty represents a new chapter of the European integration, very pronouncedly also in the fields of security and defence. It endorses the ESS dual approach to security and provides a legal basis to the ESDP (now Common Security and Defence Policy) and the comprehensive approach to crisis management. Although the CFSP still retains its intergovernmental nature and the adoption of legislative acts is excluded, nonetheless what in Maastricht, in Amsterdam and in Nice was still only a possibility, in Lisbon became a certainty: "the progressive framing of a common Union defence policy [...] *will* lead to a common defence". As regards space, the Lisbon Treaty confers to the EU a *sui generis* shared competence, also defined "parallel" competence, specifically excluding any legislative harmonisation. Article 189 of the Treaty on the Functioning of the European Union (TFEU) confers to the EU the competence to draw up a European space policy to promote, among other things, the implementation of all other Union policies. This implies that the ESP has to contribute, in a user-driven approach, to the implementation not only of the CSDP, but also of a future common defence policy. Furthermore, the positioning of Article 189 within the TFEU framework, which disciplines policy areas that are 'unionised', makes space a bridge between them and the last intergovernmental area represented by the CSDP, and allows it to contribute to the Lisbon Treaty's explicit attempt to strengthen the link between internal and external security.

Introduction

On 19 May 1993, a Communiqué issued by the Council of Ministers of the Western European Union (WEU) welcomed the official inauguration of the WEU Satellite Centre and “noted that Phase 2 of the main system feasibility study into an autonomous European space-based observation capability had [...] been launched”.¹ A following report, prepared by the WEU Technological and Aerospace Committee, confirmed that the establishment of the Satellite Centre in Torrejon represented “a first step towards the final goal of implementing a European space-based observation system which would contribute to the maintenance of international peace and security”.² The report explained that “[t]he security problems that ha[d] arisen in the Balkans, Eastern Europe and the Mediterranean region ha[d] made the creation of a space-based observation system *for both military and civil purposes, that makes optimum use of existing resources, a matter of the utmost urgency*”.³ This was regarded as a “way forward for Europe towards *independence* in an area of the utmost importance to its security”.⁴ “[T]he creation of a single, integrated system, *capable at one and the same time of providing a service for military purposes and information for civil use* within a European information network spanning the entire continent” was proposed as a means to guarantee not only military security, but also technology independence. Given the developing world market in satellite services and technologies, “it [was] obvious that countries which [would] not, in the near future, [have] develop[ed] the ability to *innovate and integrate* further [would] remain technologically dependent”.⁵

In 1993, all the elements that would characterise the following twenty years of European policies and political economy relating to space were already in place. Space technol-

ogy was becoming one of the pillars of what was going to be known as the ‘information society’, in which whoever controls the sources and flows of information is able to influence the course of history. Independent access to reliable information through satellites was going to become a necessity, one which would require a conspicuous amount of efforts and resources, too much for one single European country, too much for even a group of European countries. Words such as ‘independence’, ‘optimum use of existing resources’ and ‘space-based systems for both civil and military uses’ would gradually become the *Leitmotiv* of EU policy-making in the field of ‘space for security’. The Western European Union, reactivated in 1984 as a consequence of the renewed interest in European security issues, was playing an important role in shaping a European security identity. The Single European Act of 1985 had paved the way towards closer integration, while the negotiations between the US and USSR on the withdrawal of intermediate nuclear capabilities had prompted Europeans to acknowledge the fact that it was time for them to take more responsibilities for their own defence within NATO.⁶ It was thought that a strengthened European pillar within the Alliance and better utilisation of the WEU “would not only contribute to the security of Western Europe but also to an improvement in the common defence of all the countries of the Atlantic Alliance”.⁷ Closer consultation on European defence led the WEU Ministerial Council to the adoption, in 1987, of the ‘Platform on European Security Interests’ (the so-called ‘Hague Platform’). In its preamble, European ministers affirmed that “the construction of an integrated Europe [would] remain incomplete as long as it [did] not include security and defence”.⁸ The end of the Cold War only strengthened this resolve. With the Maastricht Declaration of 1991, WEU member states decided to develop the organisation as the defence component of the EU and as the means to strengthen the European pillar of the Atlantic Alliance. In order to strengthen the WEU’s operational role, the following Petersberg Declaration (1992)

¹ WEU, “Communiqué”, Council of Ministers, 19 May 1993, p. 5.

² WEU, “The development of a European space-based observation system”, Part II, Report submitted on behalf of the Technological and Aerospace Committee by Valleix, Rapporteur, Assembly of the WEU, 39th ordinary session, 8 November 1993, hereinafter referred to as ‘Valleix Report (1993)’.

³ Valleix Report (1993).

⁴ Valleix Report (1993).

⁵ Valleix Report (1993).

⁶ See WEU History on WEU website.

⁷ See WEU History on WEU website.

⁸ WEU, “Platform on European Security Interests” (the ‘Hague Platform’), 27 October 1987, p. 1.



enumerated the tasks which it should be able to conduct (the so-called “Petersberg tasks”, see paragraph 1.1.1). The Maastricht Treaty, which entered into force in November 1993, established the Common Foreign and Security Policy (CFSP). It stated that one of the main objectives of the Union would be “to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the *eventual* framing of a common defence policy, which *might* in time lead to a common defence”.⁹

This report constitutes an analysis of the last twenty years of EU law and policy affecting space and security and how they evolved over the two decades, influenced by the actors involved and by parallel and intertwined international political and economic developments.

The first chapter describes the ‘dual’ character of the Europeans’ response to the political and economic consequences of the end of the Cold War. To the new political and security environment, Europeans responded with the launch of the European Security and Defence Policy (ESDP) and with the development of an EU crisis management, which encompassed both civilian and military components (paragraph 1.1). To respond to the consequences of the new globalised economy, European governments allowed their industry to restructure and consolidate at transnational level, linking together civil and military production lines within single systems integrators and creating the potential for a convergence between civil and military space activities (paragraphs 1.2). Paragraph 1.2 addresses the origins of the dual-use policies and of the dual-use export control regimes. The first chapter closes with a paragraph on the EU space programmes launched at the end of the 1990s, with a focus on the dual-use space programmes launched at national level in the same period.

Chapter Two shows how the convergence of interests between governments and industry,

which had been revealed by the development of dual-use space programmes in some EU countries, was going to take place also at EU level, as a consequence of the events of the year 2003, and was leading the EU to consider the possibility of its civilian space programmes also being for ESDP purposes. In the same way as the space sector had been promoting the security dimension of space at EU level since the middle of the 1990s (paragraph 2.1), the EU started to promote the space dimension of the ESDP, anchoring its dual approach to the use and development of space assets in the new ‘comprehensive’ concept of security elaborated by the European Security Strategy (ESS) at the end of 2003 (paragraph 2.2). Chapter Two highlights also the origins of the new developments that characterise EU space policy on security *in* space.

The third chapter describes how the new political environment surrounding the signing and the entry into force of the Lisbon Treaty has affected EU policies in the field of security and space. It analyses the most important novelties introduced by the new Treaty. It presents the new EU body, the Crisis Management and Planning Directorate (CMPD), which, under the responsibility of the new High Representative for Foreign Affairs and Security Policy, is playing an important role in coordinating the civil and military structures of the EU crisis management and in improving civil-military synergies in the development of capabilities. The chapter also highlights the important role conferred by the Lisbon Treaty on space, which is that of a bridge between EU policies that are ‘unionised’ (in particular, the Area of Freedom, security and Justice) and the Common Foreign and Security Policy (including the ESDP, now Common Security and Defence Policy, which still retains its intergovernmental nature), and thus between the Internal Security Strategy and the ESS and their respective legal frameworks.

⁹ Maastricht Treaty, Treaty on European Union, Title I, Article B, emphasis added. The Maastricht Treaty was signed on 7 February 1992 and entered into force on 1 November 1993. See also Title V, Article J for the provisions regarding the establishment of the CFSP and its governance.

1. The European 'Dual' Response to the New Environment of the Post-Cold War Era

1.1 The Establishment of the European Security and Defence Policy (ESDP) and the Building Up of the Comprehensive Civil-Military Approach to Crisis Management

1.1.1 A growing Technological Gap between the United States and European Countries

With the establishment of the Common Foreign and Security Policy (CFSP) in 1992, the Members States of the European Union expressed their willingness to play a more active role at global level. The end of the Cold War and the shaping of a new international order had presented new opportunities and challenges for European countries: opportunities, for it left room for them to become global players through the European Union; and challenges, for they had to take the responsibilities that a global role implies. The Balkans wars and, in particular, the Kosovo War, very soon presented them with a hard test-bed. They demonstrated that their willingness had not been accompanied by the necessary capabilities and political structures to make it credible.¹⁰ Above all, it highlighted that Europeans lacked the capacity to take autonomous decisions and actions and space assets were an important element of that capacity. As during the Gulf War, space assets and information technologies again demonstrated the major role they play in conflict situations where the Europeans were completely dependent on foreign assets.¹¹ A

¹⁰ The Kosovo War started in March 1998. The NATO intervention took place in March 1999.

¹¹ The Gulf war had been the first, after the end of the Cold War, to show to US allies how space and information technology were becoming the linchpin of the new 'revolution in military space power' (see Hitchens, Theresa and Thomas Valasek, "The Security Dimension of European Collective Efforts in Space", *SIPRI Yearbook 2006: Armaments, Disarmament and International Security*, Chapter 11, SIPRI, 2006, p. 565, hereinafter referred to as 'Hitchens & Valasek (2006)'). Germany is said to have decided to launch its own military programme for intelli-

growing technological gap between the United States and European countries was threatening the ability of the latter to collaborate on a true partnership basis.¹² The "limits to action" experienced during the wars were regarded as a direct consequence of the lack of the necessary capabilities to autonomously conduct the so-called 'Petersberg tasks' (later comprised under the general umbrella of 'crisis management') which the Western European Union, in its Petersberg Declaration of 1992, had enumerated as the tasks that the EU should be able to conduct under the Common Foreign and Security Policy.¹³ And among those capabilities, space assets occupied an important place.

1.1.2 The Entry into Force of the Amsterdam Treaty and the Launch of the ESDP

Waiting for the entry into force of the Amsterdam Treaty, which had been signed in 1997, a Franco-British Declaration on European Defence was issued on 4 December 1998 in Saint-Malo, stating that "[t]he European Union need[ed] to be in a position to play its full role on the international stage. This mean[t] making a reality of the Amster-

gence-gathering by satellite radars (SAR-Lupe programme) as a consequence of the difficulties of getting the US to share satellite intelligence of direct relevance to the protection and security of non-US allied forces during the NATO action in Kosovo, (see Johnson, Rebecca E., "Europe's Space Policies and Their Relevance to ESDP", study commissioned by the European Parliament, Directorate-General for External Policies of the Union, June 2006, p. 55, hereinafter referred to as 'Johnson (2006)').

¹² Nicoll, Alexander, "Aid for Defence Rationalization Urges", *Financial Times*, 27 August 1998, cited in James, Andrew D. and Philip Gummert, "European Defence RTD in Context", CREDIT/METDAC, Discussion Paper 1, prepared for the Budapest workshop, 8-10 October 1998, p. 5, work carried out under the European Commission's Targeted Socio-Economic Research Programme, TSER, hereinafter referred to as 'James & Gummert (1998)'. See also Hitchens & Valasek (2006), p. 565, where they say that "the increased exploitation of space assets for both tactical and strategic purposes has provided the [United States] with an undisputed edge on the battlefield".

¹³ The words "limits to action" were used in the Secretariat of the European Convention, "Final report of Working Group VIII – Defence", 16 December 2002 (CONV 461/02), p. 4. The "Petersberg Tasks" are those enumerated by the WEU, "Petersberg Declaration", Council of Ministers, Bonn, 19 June 1992. The Amsterdam Treaty was signed in 1997 and entered into force in 1999. It incorporated the abovementioned tasks in Article 17(2).



dam Treaty [and] include[d] the responsibility of the European Council to decide on the progressive framing of a common defence policy in the framework of the CFSP [...]. To this end, the Union [should] have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crisis"¹⁴. The NATO intervention in Kosovo took place in March 1999; the Amsterdam Treaty entered into force in May, and in June, at the Cologne European Council, the EU countries established the European Security and Defence Policy (ESDP). The ESDP was launched to provide the Union with the necessary operational capabilities for the conduct of the full range of conflict prevention and crisis management tasks and to succeed the WEU in the near future in its role as the defence component of the Common Foreign and Security Policy.

The signing of the Amsterdam Treaty in 1997 and then its entry into force on 1 May 1999 represented the *conditio sine qua non* for these latest developments. It created the new role of Secretary-General/High Representative for the CFSP (Article 18); it envisaged the "possibility of the integration of the Western European Union (WEU)'s structures into the Union" (Article 17); it included provisions on qualified majority voting for the Council when adopting 'joint actions' and 'common positions' on matters of common foreign and security policy implementation (Article 23); moreover, it incorporated the 'Petersberg tasks' as the operations that the EU should be able to conduct as a credible global actor. They encompassed humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peace-making (Article 17).¹⁵ The Cologne European Council added 'conflict prevention' to the list of tasks.

1.1.3 Intensified Relations between Military and Humanitarian Actors During the 1990s

From the beginning, EU crisis management comprised both a civilian component and a military component. After initial resistance from some European States, this 'dual' approach became the main feature of the EU response to crisis.¹⁶ It resulted from the new

international way to deal with crisis as it developed during the 1990s, which was one of intensified relations between military and humanitarian actors. As well put by Rehse in 2004, "[t]he new perception of security caused a shift in international and UN policy [...]. The international community showed a greater willingness to intervene and was also prepared to go beyond diplomacy and sanctions".¹⁷ Peacekeeping tasks were becoming more comprehensive and complex. On the one hand, the UN was mandating missions which allowed the use of military force and, on the other, the number of UN agencies and Non-Governmental Organisations (NGOs) delivering humanitarian assistance was increasing substantially. As a consequence, relations between military and civilian actors in the field became more important and the traditional division of roles started to blur.¹⁸ The acronym CIMIC, standing for Civil-Military Cooperation, became one of the key expressions inside the debate that flourished in those years and each actor interpreted it in a different way. At the NATO ministerial meeting of 1996, the Communiqué Final mentioned the need to intensify the work on civil-military relations (point 14).¹⁹ NATO, which was increasing its participation in Peace Support Operations (PSOs), adopted the CIMIC concept as part of its military doctrine in 1997 and interpreted it as a way to facilitate military tasks, thus leaving to the military the central role in the operation, and considering civilians as additional sources for information gathering and important elements in "winning the hearts and minds of the local population".²⁰ Although the EU explored the possibility of adopting this sort of CIMIC concept for its crisis management through two conferences, in 2002 and 2003, it then opted for the Civil-Military Coordination (CMCO) concept, which represents "an attempt to create an EU-wide culture of coor-

inafter referred to as 'Drent and Zandee (2010)'. For more information on those who backed the civilian ESDP, see Jakobsen, Peter Viggo, "Small States, Big Influences: The Overlooked Nordic Influence on the Civilian ESDP", *Journal of Common Market Studies*, Vol. 47, No. 1, 2009.

¹⁷ Rehse, Peter, "CIMIC: Concepts, Definitions and Practice", Institut für Friedensforschung und Sicherheitspolitik (IFSH), Heft 136, 2004, p. 12, hereinafter referred to as 'Rehse (2004)'. The author also reports that, over fifty-five UN peacekeeping operations since 1945, forty-two started later than 1987.

¹⁸ Rehse (2004), p. 13.

¹⁹ NATO North Atlantic Council (NAC)/North Atlantic Co-operation Council (NACC), "Communiqué Final", Ministerial Meeting of the Berlin, 3-4 July 1996 (M-NAC-1(96)63).

²⁰ Drent and Zandee (2010), p. 12. For more information on NATO interpretation of the CIMIC concept, see "AJP-9: NATO Civil-Military Co-operation (CIMIC) Doctrine", NATO/EAPC Unclassified Publication, July 2003.

¹⁴ British-French Summit, "Declaration on European Defence", Saint-Malo, 4 December 1998.

¹⁵ Amsterdam Treaty, Article 17, paragraph 2.

¹⁶ For an interpretation of the political reasons behind the compromise that led to the creation of a civilian component of the EU crisis management, see Drent, Margriet and Dick Zandee, "Breaking Pillars: Towards a Civil-Military Security Approach for the European Union", Netherlands Institute of International Relations 'Clingendael', 2010, pp. 8-9, here-

dination for EU hybrid crisis-management missions".²¹

1.1.4 The Building up of the EU Crisis Management

At the Helsinki European Council of December 1999, two progress reports were adopted. The first concerned the development of the Union's military crisis management capabilities; the second, the development of non-military capabilities. Together with new political and military bodies and structures to be established within the Council, it was decided to also establish a non-military crisis management mechanism "to coordinate and make more effective the various civilian means and resources, in parallel with the military ones, at the disposal of the Union and the Member States"²². A Committee on civilian aspects of crisis management (CIVCOM) was consequently established on 22 May 2000.

As regards military capabilities, the Cologne European Council recognised command and control, intelligence and strategic transport as the fields where more urgent action was needed. Specifically regarding EU decision-making capacity, the Presidency Report stated that "the EU [...] need[ed] a capacity for analysis of situations, sources of intelligence, and a capability for relevant strategic planning".²³ New political and military structures were needed, such as a Political and Security Committee (PSC), an EU Military Committee (EUMC) and an EU Military Staff (EUMS), but also a Satellite Centre and an Institute for Security Studies.²⁴ A Satellite Centre and an Institute for Security Studies were already in place as part of the Western European Union's structures. They were incorporated into the EU two years later, in 2001, as a first step towards the absorption of the WEU by the EU. At the Helsinki European Council, one of the reports on military

capabilities mentioned a 'common European Headline Goal' (the so-called 'Helsinki Headline Goal'), which would be adopted for readily deployable military capabilities to be achieved by 2003, and 'collective capabilities goals', which addressed the fields of command and control, intelligence and strategic transport.²⁵ The latter had to be developed rapidly and achieved through voluntary coordinated national and multinational efforts, avoiding unnecessary duplications. Little by little, 'pooling and sharing', coherence and coordination of efforts, interoperability, standardization and aggregation of demand became the *Leitmotiv* of the ESDP.

1.1.5 Initial Asymmetry between the Civilian and the Military Components of the EU Crisis Management

At the Santa Maria da Feira European Council, the importance of ensuring a relationship between the two components of the EU response to crisis, military and non-military, was clearly recognised.²⁶ Along with acting to prevent the eruption or escalation of conflicts and consolidating peace and internal stability in periods of transition, the reinforcement of civilian capabilities for crisis management had to ensure "complementarity between the military and civilian aspects of crisis management covering the full range of Petersberg tasks".²⁷ The EU crisis management capacity was rapidly evolving. Indeed, as mentioned above, a Committee for Civilian Aspects of Crisis Management (CIVCOM) had already been set up, as well as the political and military interim bodies, which were replaced by permanent bodies in 2001. Between 1999 and 2001, the EU created the foundation of its comprehensive civil-military approach to crisis management. However, no structure corresponding to the EU Military Staff (the strategic, operational and tactical military structure, immediately subordinate to the EU

²¹ Hynek, Nik, "Consolidating the EU's Crisis Management Structures: Civil-Military Coordination and the Future of EU OHQ", standard briefing requested by the European Parliament's Committee on Foreign Affairs, Directorate-General for External Policies (DG EXPO), Policy Department (AFET), April 2010, p. 3, hereinafter referred to as 'Hynek (2010)'.

²² European Council, "Presidency Conclusions", Helsinki 10-11 December 1999, hereinafter referred to as 'Helsinki Presidency Conclusions (1999)'.

²³ European Council, "Presidency Report on Strengthening of the common European policy on security and defence", Annex III, "Presidency Conclusions", Cologne 3-4 June 1999, hereinafter referred to as 'Cologne Presidency Report on ESDP (1999)'.

²⁴ The PSC, EUMC and the EUMS were all established in 2001 with Council decisions. The EUSC and EUISS (both previously part of WEU structures) were established with Council Joint Actions in the same year.

²⁵ European Council, "Presidency Progress Report to the Helsinki European Council on Strengthening the common European policy on security and defence", Annex I to Annex III, "Presidency Conclusions", Helsinki, 10-11 December 1999. The 'Helsinki Headline Goal' was a confidential document. It was replaced in 2004 by the "Headline Goal 2010".

²⁶ European Council, "Presidency Report on strengthening the Common European Security and Defence Policy", Annex I, "Conclusions of the Presidency", Santa Maria da Feira, 19-20 June 2000. It states that "[i]n the course of the work during the Presidency on the strengthening of military and non-military crisis management and conflict prevention, the importance has been underlined of ensuring an extensive relationship in crisis management by the Union between the military and civilian fields".

²⁷ European Council, "Study on concrete targets on civilian aspects of crisis management", Appendix 3 to Annex 1, "Conclusions of the Presidency", Santa Maria da Feira, 19-20 June 2000.



Military Committee) was put in place for the civilian crisis management at that time. A very small Police Unit was set up in 2001 but it was not immediately subordinated to the CIVCOM.²⁸ Only in 2007 a proper counterpart for the EU Military Staff was established under the name of 'Civilian Planning and Conduct Capability' (CPCC).²⁹ While the military structures had been apt to the task since the beginning, there were no precedents or lessons learned for the conduct of civilian crisis management missions. It ended up being a 'learning-by-doing' process.³⁰ After the launch of the first missions and operations, efforts were made to increase coordination between the civilian and military components, first through the adoption of the concept of Civil Military Coordination (CMCO), then through the establishment of a civil-military cell (CivMil Cell) within the EUMS, and more recently through the creation of the Crisis Management and Planning Directorate (CMPD) (see paragraphs 3.1.5-7).

The first ever EU-led crisis management operation took place on 1 January 2003 and consisted of an exclusively civilian police 'mission' in Bosnia-Herzegovina (EUPM), which replaced the UN International Police Task Force. After the disagreement on the Berlin Plus Arrangements (see next paragraph) was resolved, the first military 'operation' could also be launched on 31 March of the same year to take over the NATO mission in the former Yugoslav Republic of Macedonia (FYROM). The first EU civil-military 'action' was launched in 2005 to support the African Union mission AMIS in Sudan/Darfur.³¹

1.1.6 EU/NATO Relationship and Crisis Management: Strategic Partnership between Complementarity and Competition

The relation between the EU and NATO has affected the development of the ESDP since its inception. The Europeans' decision to take over part of the responsibilities relating to global security was also a consequence of a

more relaxed international context where Americans were more willing to share the global security burden with their allies. As a consequence, EU-NATO relations have developed in a delicate balance between cooperation and competition.

A first step towards a more active role of Europeans inside NATO was taken by the creation of a European Security and Defence Identity (ESDI) at the Berlin Ministerial Meeting of 1996.³² Considered as part of the adaptation of NATO structures towards more flexibility and effectiveness, ESDI was meant to "enable all European Allies to make a more coherent and effective contribution to the missions and activities of the Alliance as an expression of [their] shared responsibilities [...] and to reinforce the transatlantic partnership".³³ At the same meeting, the allies reached an agreement (the so-called 'Berlin Agreement') which allowed the WEU to access NATO assets.³⁴ When launching the European Security and Defence Policy at the Cologne European Council, the Member States decided that, following the enunciated principle of avoiding duplications and in order to make actions more effective, EU-led operations would be implemented also with NATO assets.³⁵ However, although ESDP was conceived to be complementary to NATO, the fact that it was established in the same year as the launch of the NATO Defence Capabilities Initiative, and that it called for the development of capabilities for EU-led military crisis management operations, gave rise also to potential competition.³⁶ Furthermore, the different European membership of the two organisations has always represented a source of problems. Finally, the 43-year absence of France from NATO's integrated military structures certainly did not make easier relations between the United States and France. The return of France into the above-mentioned structures in 2009 was done in exchange for more 'Defence Europe'. The example that may better explain the path that EU/NATO relations were taking is represented by a sentence included in a European Parliament resolution on the role of NATO in the security architecture of the EU, issued in

²⁸ Gebhard, Carmen, "The Crisis Management and Planning Directorate: Recalibrating ESDP Planning and Conduct Capacities", *CFSP Forum*, Vol. 7, No. 4, 2009, p. 9, hereinafter referred to as 'Gebhard (2009)'.

²⁹ Council Joint Action 2007/806/CFSP of 6 December 2007 amending Joint Action 2005/797/CFSP on the European Union Police Mission for the Palestinian Territories.

³⁰ For information about the 'learning-by-doing' characteristic of the first EU civilian crisis management missions and the critics that surrounded the conduct of the first ever EU mission in Bosnia-Herzegovina, see Nowak, Agnieszka (ed.), "Civilian Crisis Management: The EU Way", EU Institute for Security Studies (EUISS), *Chaillot Paper*, No. 90, June 2006, p.15.

³¹ Council Joint Action of 18 July 2005 on the European Union civilian/military supporting action to the African Union mission in the Darfur region of Sudan.

³² NATO North Atlantic Council (NAC), "Final Communiqué", Ministerial Meeting, Berlin, 3-4 June 1996, hereinafter referred to as 'NATO Final Communiqué (1996)', point 5.

³³ NATO Final Communiqué (1996), point 5.

³⁴ NATO Final Communiqué (1996), point 6.

³⁵ Cologne Presidency Report on ESDP (1999).

³⁶ For an extremely interesting analysis of the relationship between the EU and NATO and on how it is influenced by the Lisbon Treaty, see Duke, Simon, "The EU, NATO and the Lisbon Treaty: Still Divided within a Common City", paper prepared for The European Union Studies Association Conference, 3-5 March 2011, Boston, Massachusetts, US, hereinafter referred to as 'Duke (2011)'.

the same year. It states that “a decision on which organisation should deploy forces should be based on the political will expressed by both organisations, on operational needs and political legitimacy on the ground, and on their ability to deliver peace and stability”.³⁷ As well put by Duke, the post-Cold War new order has emphasised “the breadth of the Union’s programmes and instruments” and the considerable expertise and credibility of a number of EU Member States in responding to crisis which, more often, requires non-combat-related missions.³⁸ When considering the broader range of tasks which conflict prevention and post-conflict stabilisation imply, “the EU is an inherently broader security actor than NATO”.³⁹

Nevertheless, the ESDP and EU role in crisis management were conceived to be developed “without prejudice to actions by NATO” or “where NATO as a whole is not engaged”.⁴⁰ NATO remains the foundation of the collective defence of its members and this is stated in every document referring to the matter. NATO, on the other hand, has supported the ESDP since its inception. At the Washington NATO summit of 1999, the NATO Member States affirmed that “a more effective role for the European Union in conflict prevention and crisis management [would] contribute to the vitality of a renewed Alliance”.⁴¹ In 2002, the EU and NATO issued a joint declaration on the ESDP, establishing a strategic partnership in crisis management between the two organisations.⁴² Finally, in 2003, the ‘Berlin Plus Arrangements’ allowed the EU to succeed the WEU in accessing the NATO assets and capabilities. It is interesting to note that, while at the Washington summit the role of the EU in defence matters was confined to conflict prevention and crisis management, at the Chicago Summit of 2012, the Declaration on Defence Capabilities refers to a more general ‘European defence’. It recognises “the importance of a stronger and more capable *European defence* and welcome[s] the efforts of the European Union to strengthen its capacities to address common security challenges. These efforts are themselves an im-

portant contribution to the transatlantic link”.⁴³ And, indeed, the current development of the EU crisis management, which is exploiting the full potential of the comprehensive approach, seems to create a sort of specialization for the EU (more fit to respond to crises which require less combat-related missions) which could/should complement that of NATO (more fit to respond to crises which require more combat-related missions).⁴⁴

Finally, the possibility that NATO would be allowed to access EU capabilities, as now the EU is allowed to access NATO’s (the so-called ‘Berlin Plus reversed’), cannot be excluded.⁴⁵ However, while the specialisation of roles would allow the creation of a sort of equilibrium between EU and NATO, the ‘Berlin Plus reversed’ might increase the potential for competition.

1.2 The Consolidation of the European Aerospace and Defence Industries and the Promotion of Technological Convergence between Civilian and Military Space Activities

1.2.1 The Consolidation of the US Defence-Related Industry

In the same way that the new international order was leading to intensified relations between military and humanitarian actors in the management of security crises, and leading to the blurring of the traditional division of roles in the field, a similar blurring of distinctions was taking place at the industrial level between civilian and military production lines. In 1996, a Communication from the European Commission entitled “The challenges facing the European defence-related industry, a contribution for action at European level” clearly promoted a *dual-use* (civil-military) approach, both at national and at European level, in order to facilitate the integration of defence-related industrial activities and so tackle the difficulties facing the sector as a

³⁷ European Parliament resolution of 19 February 2009 on the role of NATO in the security architecture of the EU (2008/2197(INI)), point 17, emphasis added.

³⁸ Duke (2011), pp. 5-6.

³⁹ Duke (2011), p. 6.

⁴⁰ For the first quotation, see Cologne European Council Declaration on ESDP (1999). For the second quotation, see Helsinki Presidency Conclusions (1999).

⁴¹ European Council, “Presidency Progress Report to the Helsinki European Council on strengthening the Common European Policy on Security and Defence”, Annex I to Annex IV, “Presidency Conclusions”, Helsinki, 10-11 December 1999.

⁴² EU-NATO, “EU-NATO Declaration on ESDP”, Brussels, 16 December 2002.

⁴³ NATO, “Declaration on Defence Capabilities: Toward NATO forces 2020”, Chicago, 20 May 2012.

⁴⁴ Duke (2011), p. 6.

⁴⁵ This possibility is mentioned by Pflüger, Tobias, “Militarism, Neoliberalism, Elitism: The Agenda of the French EU Council Presidency”, *Informationsstelle Militarisierung (IMI)*, Analyse, 2008, p. 3, hereinafter referred to as ‘Pflüger (2008)’.



consequence of the end of the Cold War.⁴⁶ In its introduction, the Commission acknowledged that the less risky environment that Europe was experiencing because of the end of the Cold War had made it possible to cut military budgets. The fall of domestic and international demand for European defence equipment, however, was causing a “significant direct impact, both on employment [...] and [...] on the manufacturing base and innovation capacity of European industry as a whole”, while EU imports had not declined correspondingly.⁴⁷ The Commission recognised the importance of the global approach that the establishment of a European Security and Defence Identity (ESDI) had brought to the subject but considered it a too long-term process for industry and called for an urgent and timely reaction at European level, for the existence of the whole sector was at stake, particularly considering the fiercer international competition (boosted by the globalisation process). A Commission communication of the following year, which specifically addressed the aerospace industry, described the situation facing the European industry when compared with the American industry.⁴⁸ With a 58% share of the world aerospace business (against 29% of the EU), the US industry was experiencing a process of consolidation with concentration in three prime suppliers, out of more than twenty in 1980. The policy of the federal government to maintain superiority in aerospace, ensuring focused and effective national investments in the sector and strengthening the public-private partnership, facilitated the consolidation process. Contrary to the fragmentation of the European aerospace market, the US industry was benefiting greatly from being heavily supported by one single government while Airbus, Eurocopter, Eurofighter and Arianespace had to address themselves to a number of different governments “with all too often differing priorities”.⁴⁹ In 1995, the US space budget was estimated to be about ten times that of European space budgets. Furthermore, US public procurement was mostly directed at US companies. As regards exports, the competitive position of the American industry had started to improve also as a consequence of the significant depreciation of the dollar against European currencies since

1985. As regards research and development (R&D), the US government was investing massively in both civil and military aerospace research and technological development. What the Commission did not mention was the Technology Reinvestment Project (TRP) that the US Advanced Research Projects Agency (ARPA) was implementing in those years. The TRP was described in the 1995 annual report of the US National Science Foundation (NSF) as “a key DoD [Department of Defense] conversion program that promoted dual-use technologies through competitively selected projects supported jointly by ARPA and the private sector”.⁵⁰ In the same year, the US DoD described it as a “program designed to provide affordable leading-edge technology to the [DoD] by leveraging commercial know-how, investments, and markets. The program [was doing] this either by finding a new market for existing defense technologies in order to significantly lower the price to DoD, or, for those areas in which commercial technology leads defense, by providing DoD access to emerging commercial technology”.⁵¹ The US government had been promoting a dual-use approach for its research and procurement policies for several years and, according to the Commission, this was “leading to an increasingly integrated defence-civil technology and industrial base” that was optimising the use of Research & Technology Development (RTD) resources and encouraging the restructuring and consolidation of the industry.⁵²

Whether or not the situation was overestimated and the conclusions made catastrophic-sounding to justify the call for an EU response, it could be argued that the implementation of dual-use policies by the American Administration, the restructuring and consolidation process of the American industry, the significant disparity in government spending between US and all EU countries put together, and the massive use of space technology displayed by the US in the wars of the post-Cold War era, all of these reasons, combined with the booming process of globalisation, which was making competition between established space-faring nations for new institutional markets very tough, were indeed playing a major role in the EU-US industrial competition in the field.

⁴⁶ Commission Communication, “The challenges facing the European defence-related industry, a contribution for action at European level”, 21 January 1996 (COM(96) 10 final), p. 3, hereinafter referred to as ‘Communication on defence-related industry (1996)’.

⁴⁷ Communication on defence-related industry (1996), p. 3.

⁴⁸ Commission Communication, “The European aerospace industry meeting the global challenge”, 24 September 1997 (COM(97) 466 final), hereinafter referred to as ‘Communication on aerospace industry (1997)’.

⁴⁹ Communication on aerospace industry (1997), p. 4.

⁵⁰ US National Science Foundation (NSF), “Federal R&D Funding by Budget Function: Fiscal Year 1994-1996”, 1995, hereinafter referred to as ‘NSF (1995)’.

⁵¹ US Department of Defense, “ARPA Extends Solicitation Release Date for TRP”, News Release, 2 February 1995.

⁵² Communication on aerospace industry (1997), p. 4.

1.2.2 The Rise of Electronic and Information Technologies: the Origins of Dual-Use Policies

Among the reasons behind the promotion and adoption of dual-use policies, the rise of electronic and information technologies occupies a relevant place.⁵³ Developed by the commercial sector since the 1960s, these new technologies already caught the attention of the military during the 1970s and became the linchpin of the so-called Revolution in Military Affairs (RMA). During the first Gulf war, electronics and satellite technology demonstrated their potential as enhancers at all levels. “[F]rom weapon system to central command organisation, communication was modernised, command and control was broadened and centralised, reconnaissance, surveillance and target acquisition were enhanced”.⁵⁴ As Brzoska put it in 2006, the increased dependence of the American military on these technologies created a shift in public R&D and procurement spending, away from traditional defence companies and towards electronics and computer companies, many of which were not part of the defence industry culture and had had little contact with the military sector before.⁵⁵ As a consequence, traditional defence-related companies started to acquire capabilities in electronics and information technology, mostly through acquisitions, and transformed themselves into system integrators. In this way, they linked various industrial sectors, civil and military, to meet the changing public demand.⁵⁶ The frontiers between defence and civilian technologies started to blur and so did the boundaries between the defence and civilian markets. In addition, specifically regarding Earth observation satellites, the launch of the very capable civilian satellite SPOT (Système Probatoire d’Observation de la Terre, developed by France with the participation of Belgium and Sweden) in 1986, whose images were for sale, put an end to the US-Soviet hegemony in the sector and opened the way to the commercial use of Earth observation satellite data. The end of the Cold War stimulated both the intertwining of civilian and military industrial sectors and the shift in public spending for R&D even further by lessening

secrecy requirements under the pressure of Parliaments’ demand for more transparency, and by decreasing defence budgets which ultimately led to the adoption of a more cost-conscious approach also within military establishments.⁵⁷

1.2.3 The Shift in Public Spending for R&D away from Traditional Defence Industry

As regards the shift in public spending for R&D, in the abovementioned report of 1995, the US NSF acknowledged that “R&D funding within the “national defense” function ha[d] continued to decrease in real terms since 1993” and that “the proposed real decrease in defense-related R&D budget authority [was] offset by a real increase in proposed funding of civilian R&D in 1996”.⁵⁸ Private R&D was also stimulated and by the late 1990s it already represented 75% of total R&D against over 60% of public funding during the late ‘50s and early ‘60s.⁵⁹ Regarding US military share in total R&D, this declined from 25 % in 1981 to 16 % in 2003.⁶⁰ In the same period, OECD countries other than US experienced an even more pronounced decline, from 9.3% to 3.0% of corresponding military share of total R&D, while the growth of privately funded R&D was even larger.⁶¹ In general, both public and private funding by European countries were slowly moving away from traditional defence industry (and also from aerospace) towards new research-intensive sectors and the trend has not changed until the present day. Data collected by the European Commission in 2011 and released in ‘The 2012 EU Industrial R&D Investment Scoreboard’, for instance, show the aerospace and defence sector to lag behind those of pharmaceuticals & biotechnology, technology hardware and equipment, automobiles & parts, software & computer services, electronic & electrical equipment, chemicals, and industrial engineering, to finally position itself at the eighth rank.⁶² Today, not only electronics and information technology, but also other technologies developed by the civilian sector, such as nanotechnologies, robotics and biotechnology, have caught the attention of governments and are further pushing public spending away from traditional defence platforms.

Dual-use policies in part represented a response to the new political and economic

⁵³ In this paper, the definition of ‘dual-use policy’ covers all those policies which promote the development of technologies which are then defined dual-use by export control regimes.

⁵⁴ Brzoska, Michael, “Trends in Global Military and Civilian Research and Development (R&D) and Their Changing Interface”, in *Proceedings of the International Seminar on Defence Finance and Economics, 13-15 November 2006, New Delhi, India*, 2006, p. 15, hereinafter referred to as ‘Brzoska (2006)’.

⁵⁵ Brzoska (2006), p. 15.

⁵⁶ Brzoska (2006), p. 15.

⁵⁷ Brzoska (2006), p. 15.

⁵⁸ NSF (1995).

⁵⁹ Brzoska (2006), p. 11.

⁶⁰ Brzoska (2006), p. 11.

⁶¹ Brzoska (2006), p. 11.

⁶² Joint Research Centre, “The 2012 EU Industrial R&D Investment Scoreboard”, 2012, p.44.



environment of the post-Cold War era, and exploited trends that were already in progress, and in part even further contributed to the development of these trends. If we consider all those policies that promote and support the development of technologies that, once produced, are subject to dual-use export control regimes, they encompass: 1) acquisition of commercial technologies for defence purposes, to leverage cutting-edge civilian technologies (also called 'spin-on' or 'spin-in' policies); 2) research and development of dual-use technologies (also called 'dual-purpose' technologies) funded jointly by military and civilian (public and/or commercial) actors to serve both the military and civilian markets; 3) commercialization of military technologies, to counterbalance cuts in military spending, thus leveraging the faster innovation and production cycles of the commercial industry ('spin-off' policies).⁶³ Governments have an incentive to pursue dual-use policies as greater risk and cost-sharing result in lower total risks and costs. At the same time, industry profits from a broader and more diverse customer base.⁶⁴

1.2.4 The Space Sector: The Avant-Garde of the Restructuring and Consolidation Process in Europe

By the middle of the 1990s, the US aerospace and defence industry was already represented by only three big so-called 'primes' which were "all active across a wide range of aerospace activities in order to balance their risks, increase their ability to cope with market cycles and take full advantage of technology and skill transfers between the different sectors".⁶⁵ Among the stated reasons for the Boeing-McDonnell Douglas merger in 1996 was the wish to combine the civilian capabilities of the first with the military capabilities of the latter.⁶⁶ By contrast, the fragmentation of the European market for defence equipment, as described by the Commission in 1996, had generated a number of competitive disadvantages, preventing, for example, the full exploitation of economies of scale and generating inefficiencies because of the lack of serious competition for domestic contracts. The Commission also identified "inefficient work-sharing" and the rule of '*juste retour*' in international cooperative programmes as the causes of overcapacity and additional costs.

⁶³ US Department of Defence, "DoD Domestic Technology Transfer (T2) Program", Directive Number 5535.3, 21 May 1999, p. 2.

⁶⁴ Hitchings, Sean, "Policy Assessment of the Impacts of Remote-Sensing Technology", *Space Policy*, Vol. 19, 2003, pp. 119-125.

⁶⁵ Communication on aerospace industry (1997), p. 3.

⁶⁶ Communication on aerospace industry (1997), p. 13.

Regarding the European aerospace sector in particular, its defence revenue was estimated at around 40%.⁶⁷ To optimize the overall use of R&D and resources and to facilitate restructuring or diversification, the space branch was already witnessing a convergence between its civil and defence activities, although only at national level. In the words of the Commission in 1996, "[t]he space industry display[d] a great degree of common ground between military and civil applications".⁶⁸ At the end of the year, another communication, which addressed specifically the space sector, reaffirmed the same concept and added that "[a]lthough it is not within the Commission's remit to consider the military aspects of space technology applications, any European strategy should ensure the convergence of civil and military effort *in order to avoid duplications and make the best use of the available public funding*".⁶⁹ The following year, also the aerospace industry communication described the aerospace sector as one in which a close relationship existed between the civil and military sides of the business.⁷⁰

1.2.5 The Proposals of the Commission: Cross-Border Industrial Integration, Technological Synergies between Civil and Defence Activities, and Action at EU Level

To respond to the challenge coming from the other side of the Atlantic and to promote global competitiveness for its industry and preserve its technological base, the European Commission promoted cross-border industrial integration, technological synergies between civil and defence activities, and action at EU level, which included the promotion of the development of a European market for defence equipment, EU rules for public procurement, research and technological development activities applying a dual-use approach, standardization and technical harmonization, and EU regulations on export of dual-use items, to be complemented by a corresponding level of harmonization at national level.⁷¹ It also suggested the creation

⁶⁷ Communication on defence-related industry (1996), p. 8.

⁶⁸ Communication on defence-related industry (1996), p. 11.

⁶⁹ Commission Communication, "The European Union and Space: Fostering Applications, Markets and Industrial Competitiveness", 4 December 1996 (COM(96) 617 final), p. 2 and 24, emphasis added, hereinafter referred to as 'Communication on space industry (1996)'.
⁷⁰ Communication on aerospace industry (1997), p. 12.

⁷¹ The first EU measures regarding the control of dual-use items date back to 1994. They were the Council Regulation (EC) No 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods, and the Council Decision of 19 December 1994 on the joint action adopted by the Council on the basis of

of one single industrial sector that would comprise aeronautics, space and defence: the aerospace and defence sector. Thus, EU countries should allow the restructuring and consolidation of their national industries at transnational level and the EU should adopt policies that mitigate the differences between EU and US space budgets and mirrored the US dual-use policies. To mitigate the differences in budgets, the EU should launch EU-wide space programmes. To mirror the US dual-use policies, Europeans should respond by increasing the use of space technology also for military activities.

European governments indeed convinced themselves of the necessity to allow their defence-related industry to consolidate at transnational level. EU-wide space programmes were launched (see paragraph 1.3) and military and dual-use space programmes were launched at national and bilateral levels.⁷²

1.2.6 The European Governments' Decision to Allow Their Aerospace Industry to Consolidate at Transnational Level: The Formation of the European 'Primes' EADS and Thales Alenia Space

The governments of France, Germany, Italy and UK made a concrete step towards the decision to allow their industry to restructure and consolidate at transnational level when they established, in November 1996, the *Organisme Conjoint de Coopération en Matière d'Armement (OCCAR)* and then signed the relative Treaty, which entered into force in 2001. In the Preamble of the OCCAR Convention, the four parties stated that "the attainment of the best ratio between cost [...] and efficiency for current and future cooperative programmes [was] an absolute necessity; and that to this end, new programme management methods [had to] be developed and optimised, procedures for the granting of contracts made more effective, and the *creation of transnational and truly integrated industrial prime contractors encouraged*".⁷³ They considered the OCCAR a

Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods (94/942/CFSP). They have been followed by Council Regulation (EC) No 1334-2000, Council Regulation (EC) No 1183/2007, Council Regulation (EC) No 428/2009, and finally by Regulation (EU) No 388/2012 of the European Parliament and the Council of 19 April 2012 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

⁷² James & Gummert (1998), pp. 7-8.

⁷³ OCCAR Convention, signed in 1998 and entered into force in 2001, emphasis added, hereinafter referred to as 'OCCAR Convention (1998)'.

contribution to the establishment of a European Security and Defence Identity and a practical step towards the creation of a European Armaments Agency.⁷⁴ Almost simultaneously, a Statement "designed to facilitate the restructuring of the European aerospace and defence electronic industries" was signed in December 1997 by France, Germany and UK, with the support of Italy, Spain and Sweden. It called on Daimler Benz Aerospace (DASA), Aérospatiale, Construcciones Aeronáuticas SA (CASA) and British Aerospace (BAe) "to present a clear plan and detailed calendar for the objectives, scope, operational structure for a *unified European Aerospace and Defence Company (EADC)* [which] would cover *both civil and military aerospace*".⁷⁵ The 1997 Statement was followed, in 1998, first by a Joint Statement involving France, Germany, Italy, and UK, and supported also by Sweden, and then by a Letter of Intent concerning Measures to Facilitate the Restructuring of European Defence Industry, signed by all six states.⁷⁶ The governments involved envisaged a "private sector structure with a single management".⁷⁷ Instrumental was the establishment of the Airbus consortium, scheduled for the following year (the shares of which were spread among companies of different nationalities), as well as the harmonisation of the remaining differences between the companies, in particular those related to the shareholding structure.⁷⁸ Concerning this last point, the partial privatisation of the French

⁷⁴ OCCAR Convention (1998).

⁷⁵ Content of the Statement reported by the European Parliament Report of 13 October 1998 on the communication from the Commission on the European Aerospace Industry - meeting the Global Challenge (COM(97)0466 - C4-0547/97) (PE 223.989/fin.), p. 8, hereinafter referred to as 'Parliament Report (1998)'.

⁷⁶ The Statement, the Joint Statement and the Letter of Intent are mentioned in the preamble of the Framework Agreement between the French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of Spain, the Kingdom of Sweden, and the United Kingdom of Great Britain and Northern Ireland concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry, Farnborough, 27 July 2000, emphasis added, hereinafter referred to as 'LoI Framework Agreement (2000)'.

⁷⁷ Parliament Report (1998), p. 8.

⁷⁸ For example, none of the British Aerospace shareholders had a holding greater than 5 or 6%. Consequently, none of them could exert any influence over company policy. By contrast, Daimler-Benz had over 96% of the shares in DASA. In some Member States, the State, on defence grounds, had a majority holding. Germany and UK were expressing concerns about the fact that Aérospatiale was managed by the French government. The unexpected merger between Aérospatiale and Matra Hautes Technologies on 22 July 1998, which left only a 'golden share' of the new company to the French government, was considered "a clear and positive signal for the reorganisation of the European aerospace industry" (see Parliament Report (1998), pp. 8-9).



state-owned Aérospatiale, as a consequence of the unexpected merger with Matra Hautes Technologies on 22 July 1998, was considered an important step in that direction. However, the British General Electric Company's decision to sell its defence electronics business (MES) in December of that same year changed everything and the negotiations which had been ongoing since 1995 between DASA and BAe failed. BAe merged with MES in November 1999 and became BAE Systems. In May 2000, Matra Marconi Space and DASA's space divisions created a joint venture called Astrium, 50% of which was owned by Aérospatiale Matra and BAE Systems and 50% by DASA.⁷⁹ In July, DASA merged with Aérospatiale-Matra and with CASA, creating the European Aeronautic Defence and Space Company (EADS).

During the same month, a so-called Letter of Intent Framework Agreement was signed by the Defence Ministers of France, Germany, Italy, Spain, Sweden and UK, as a formalisation of the commitments made in 1998, and with the expressed wish to "create the political and legal framework necessary to facilitate industrial restructuring in order to promote a more competitive and robust European defence technological and industrial base in the global defence market and to contribute to the construction of a common European security and defence policy".⁸⁰ However, as mentioned above, the possibility of forming a single European Aerospace and Defence Company, or "EuroCo", had already vanished.⁸¹ Nonetheless, the transnational restructuring and consolidation processes were boosted. In 2001, both EADS and BAE Systems decided to sell their respective Airbus factories to the newly created Airbus SAS in return for 80% and 20% of shares respectively. In the same year, EADS, BAE Systems and Alenia Marconi Systems (which was a BAE Systems/Finmeccanica company) decided to sell their missile businesses and formed the MBDA (Matra BAE Dynamics Alenia). EADS took a 37.5% share. In 2003, EADS acquired BAE's shares of Astrium and became the sole owner of the company, which was renamed EADS Astrium. In 2006, EADS became the sole shareholder of Airbus, following the BAE Systems decision to sell its shares. At present, EADS owns also Eurocopter and Cassidian which, alongside Astrium and Airbus, form the four main divisions of the group. Meanwhile, the French Thales and the Italian Finmeccanica were also

acquiring the status of important prime contractors. In 2005, Finmeccanica and Alcatel-Lucent merged their respective Alenia Spazio and Alcatel Space and created two new joint ventures: Alcatel Alenia Space (67% Alcatel and 33% Finmeccanica) and Telespazio Holding (67% Finmeccanica and 33% Alcatel). In 2007, Thales acquired Alcatel's shares of the two companies, the first of which was renamed Thales Alenia Space (TAS).

Notwithstanding the failure to create a single European Aerospace and Defence Company (EADC), Europe now has two major primes, EADS and Thales Alenia Space, which deal with space, both at civil and military level. The sector in which they are categorised is indeed called 'aerospace and defence sector'. Given the present situation, European industry has an incentive to promote the development of dual-use technologies, since it can utilize a single production line to serve both civilian and defence markets, so as to cope with market cycles and oscillations in public demand. Procurement of dual-use technologies represents a viable solution also for European countries with limited financial resources for defence and space. Furthermore, the European Union's adoption of a comprehensive civil-military approach to security and defence matters represents a further incentive for exploring possibilities for synergies between the two sectors also at European Union level (see paragraph 2.1.2).

1.2.7 The Direct Consequence of the Adoption of Dual-Use Policies: Dual-Use Export Control Regimes

To the convergence of interests between governments and industry, which has led to a consequent convergence between civil and military space activities, corresponds, however, a divergence between security needs and commercial interests.

The end of the Cold War and the two parallel processes of economic globalization and of the commercialisation of space activities have led to a conspicuous enlargement of the customer base for the space industry. However, they have also increased the competition among established space faring-nations for the new markets and stimulated the emergence of new competitors, both private and institutional (the latter, mostly as a result of the inevitable technology transfer, whether intentional or unintentional). As a consequence, the space sector at present is characterised by a strong propensity towards export activities and towards international cooperation. At the same time, space technology has always been, and still remains, a

⁷⁹ Matra Marconi Space was a joint venture established in 1990 between Matra Espace (Lagardère Group) and Marconi Space System (General Electric Company).

⁸⁰ Lol Framework Agreement (2000), emphasis added.

⁸¹ Communication on aerospace industry (1997), p. 14. See also James & Gummert (1998), p. 6.

highly strategic technology, indissolubly linked with intelligence and defence. The adoption of dual-use policies and the promotion of the commercialisation of space activities have thus been followed by the flourishing of national and international export control regimes for dual-use goods and technologies, to counterbalance commercial interests with security concerns. From governments' perspectives, commercial goods and technologies that may be used also by the military, technologies which are developed with a dual purpose, and military technologies that are commercialized, all have to be protected and controlled to avoid the possibility that they may be acquired by unfriendly customers (or copied by unwanted competitors). All these technologies may be considered sensitive and defined dual-use by a national export control regime. Indeed, if only companies of one country develop these sensitive technologies, then the government of that country has the power to control them, confining their proliferation to its territory with the adoption of an export control regime justified on national/state security grounds. International dual-use export control regimes come into being when technology transfer involves several countries or is politically significant for an entity like the EU.

1.2.8 Dual-Use Export Control Regimes: Another Kind of Non-Proliferation Regime

Dual-use export control regimes are another kind of non-proliferation regime. National and international non-proliferation regimes have always functioned as a way to restrict access to sensitive technologies. During the first five years after the end of World War II, the Western bloc powers established the Coordinating Committee for Multilateral Export Controls (CoCom), although more to put an arms embargo on COMECON countries than to protect a particular technology from proliferating. The most important attempt to prevent the proliferation of a sensitive technology at international level involved (and still involves) nuclear technology. The first initiative dates back to 1959, when only the US, USSR and UK possessed it. On a proposal made by Ireland, the General Assembly of the UN adopted Resolution 1380 (XIV), which proposed to consider "the feasibility of an international agreement, subject to inspection and control, whereby the Powers producing nuclear weapons would refrain from handing over the control of such weapons to any nation not possessing them and whereby the Powers not possessing such weapons would

refrain from manufacturing them".⁸² This did not prevent France and China from testing their first nuclear bombs in 1960 and in 1964 respectively. In 1965, first the United States and then the Soviet Union submitted to the General Assembly their draft treaties to prevent the spread of nuclear weapons. The Treaty on Non-Proliferation of Nuclear Weapons, also known as the Non-Proliferation Treaty (NPT) was adopted in 1968 and entered into force in 1970. Since then, a dual-use control approach has been applied to the development of nuclear capacities. Development for civil uses is accepted while development of nuclear weapons is prohibited.

In 1972, the Soviet Union and the United States signed a bilateral treaty on the limitation of Anti-Ballistic Missiles Systems (ABM Treaty) in which they undertook also "not to transfer to other States [...] ABM systems and their components".⁸³

As for space technology, during the Cold War it was usually controlled by governments, thus concerns regarded mostly state proliferators. Originally promoted and signed only by Western allies (Canada, France, Germany, Italy, Japan, United Kingdom and United States), the Missile Technology Control Regime (MTCR) of 1987 specifically applied to space launch technologies and the attempt to control its proliferation was justified by the need "to limit the risks of proliferation of weapons of mass destruction [...] by controlling transfers that could make a contribution to delivery systems [...] for such weapons" and "to limit the risk of controlled items and their technology falling into the hands of terrorist groups and individuals".⁸⁴ During the 1990s, as a consequence of the adoption of dual-use policies, the existing control regimes for arms exports had to be adapted to the new situation. Export control regimes for goods and technologies that were defined as dual-use flourished. At the international level, CoCom's approach to arms control was no longer considered appropriate. The Committee ceased to exist on 31 March 1994 and was replaced the following year by the Wassenaar Arrangement on Export Control for Conventional Arms and *Dual-Use* Goods and Technologies.⁸⁵ Attesting to the new geopolitical situation, the Russian Federation,

⁸² UN General Assembly Resolution, "Prevention of the wider dissemination of nuclear weapons", 1380 (XIV) of 20 November 1959.

⁸³ Treaty between the United States of America and the Union of Socialist Republics on the limitation of Anti-Ballistic Missiles systems (ABM Treaty), 26 March 1972, Article IX.

⁸⁴ Missile Technology Control Regime (MTCR), 1987.

⁸⁵ Wassenaar Arrangement on Export Control for Conventional Arms and Dual-Use Goods and Technologies, Wassenaar, the Netherlands, 19 December 1995.



Ukraine and several other countries of the former Warsaw Pact were among the founding members.⁸⁶

1.2.9 Dual-Use Policies in the EU?

The more civilian technologies are used by the military; the more military technology is commercialised; and the more dual-purpose technologies are developed, the more the lists of dual-use goods and technologies lengthen. This, in turn, means that those same goods and technologies are excluded from free international commercialization, thus the possibilities for a company to counterbalance costs through economies of scale decrease. This is especially true in Europe where the limited scale of national markets, combined with the absence of a real, single European market for dual-use goods and technologies, forces companies to find other markets. As Flamm wrote in 1999, referring specifically to the military aerospace sector, “[t]he industry is driven by economies of scale [...]. The higher the volume, the more fixed development cost and production costs can be spread across the entire production run and the greater the learning effect. As a result, with the worldwide defence downsizing, exports have become critical. This is especially true for non-U.S. producers. U.S. companies still enjoy a large domestic market, with U.S. industry accounting for roughly half of the world sales. Everyone else competes for the other half of the market. That puts non-U.S. producers at a distinct disadvantage – basically they need exports to maintain essential economies of scale, or they die”.⁸⁷

Considering the present characteristics of the European space industry, included in the aerospace and defence sector, the promotion of a dual-use approach cannot be separated from the promotion of an integrated European defence and dual-use equipment market, and indeed the EU is promoting harmonization and standardization as first steps towards that direction.⁸⁸ The adoption of regulations setting up a Community regime for the control of export of dual-use items and technology also has the same goal. As stated in the 2000 regulation, “(t)he existence of a

common control system and harmonised policies for enforcement and monitoring in all Member States is a prerequisite for establishing the free movement for dual-use items inside the community”.⁸⁹ However, European cooperation in the field of defence is still at the beginning. Furthermore, the US decision, effective in 1999, to include almost all space technologies into the US Munitions List (USML) of the International Trade in Arms Regulations (ITAR), which prohibits retransfer (or re-export) of listed items, limits European industry’s ability to export, given the dependence of European industries on the supply of several US space technology components.⁹⁰ On the other hand, because of ITAR, European primes have started to use European components, thus giving European equipment manufacturers a tremendous advantage. In the same vein, the European Commission, the European Space Agency (ESA) and the European Defence Agency (EDA) are promoting autonomous development of, at least, those space technologies that are considered critical for “European strategic non-dependence”.⁹¹

Another condition for the viability of dual-use policies in Europe is the necessity of a greater financial commitment on the part of European governments. Indeed, opting for a dual-use approach means reducing the possibilities of commercializing space technology abroad without the consent of public authorities. Thus, increasing public demand is necessary to counterbalance the losses on the commercial side. However, increasing dependence on public demand is likely to reduce what has been a key feature of the European space industry, the capacity to achieve relatively high shares of the global market with relatively low public financial support, for less public financial support has imposed a need for a higher level of innovation on European industry. Policies which promote independence/non-dependence for technology development indeed seem to represent the best solution in the long-term, since they would allow European industry to access non-

⁸⁶ Czech Republic, Hungary, Poland, Slovak Republic and Bulgaria are among the founding members.

⁸⁷ Flamm, Kenneth, “The Policy Context for Military Aerospace Offsets”, (Panel 2) in Wessner, Charles W. (ed.), “*Trends and Challenges in Aerospace Offsets*”, Board of Science, Technology and Economic Policy, National Research Council, National Academy Press, Washington, D.C., 1999.

⁸⁸ Ghivarelli, Isa, “The State of the European Defence Equipment Market” Research Paper, Centro Studi sul Federalismo, 2009.

⁸⁹ Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual use items and technology, point 3 of the Preamble.

⁹⁰ Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, US Public Law 105-261, 105th Cong., 1998. Sec. 1513. Regarding the inclusion of space technologies in the US Munitions List (USML) of the ITAR, see Seebode, W. Elizabeth, “*Integration of Military and Civilian Space Assets: Legal and National Security Implications*”, thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirements of the LL.M degree, McGill University, Montreal, 2003, p. 49.

⁹¹ EC- ESA-EDA Joint Task Force, “European Non-Dependence on Critical Space Technologies: EC-ESA-EDA List of Urgent Actions for 2009”, 6 March 2009. It was followed by an updated list in 2012.

European markets more easily, also taking advantage of restrictions imposed by ITAR on American industries, and would give to European governments a certain flexibility in deciding whether to promote commercial or institutional markets, depending on economic opportunities and constraints.

1.3 Catching Up on Space Capabilities

1.3.1 The Galileo Initiative

As already noted, in the middle of the 1990s, the Commission was also proposing action at EU level to react to the fierce competition coming from the other side of the Atlantic (paragraph 1.2.5). Already in June 1994, a Commission communication had called for urgent decisions on the initiation of European involvement in the implementation of the Global Navigation Satellite System (GNSS).⁹² Inmarsat was looking for customers for its navigation transponders on board its Inmarsat III satellites and would have soon called for proposals in order to allocate them before winter. The process of constituting a Global Navigation Satellite System by the augmentation of the US Global Positioning System (GPS) through Inmarsat transponders, which were designed to improve its utilisation for civil use, was going to be launched on the initiative of the United States. According to the Commission, without prompt action, "the control of the entire system [would have been] done from overseas by implementing a civil American complement to the military GPS system" and "[t]he result would [have] be[en] a major dependence of Europe on the provision of a strategic asset for the future and a poor perspective for its industry to capture the huge associated market for user equipment".⁹³ The Commission communication aimed at establishing a European Union programme. As was explained two years later, a European level action was indispensable, for "[t]he free availability of the [existing] signals and the political complications due to the dual use character of today's systems [...] ma[de] it very difficult for a purely private initiative to open the door to Europe's full participation in this market".⁹⁴

The Council endorsed the Commission communication and invited the Commission to

initiate work on a European complement to the existing systems (GNSS 1) using Inmarsat satellites and, in parallel, to initiate preparatory work on a European global navigation satellite system (GNSS 2) for civil use, to be operated on an independent basis, "in order to make it possible to use the results of GNSS 1 research and development work immediately".⁹⁵ Four years later, the Commission proposed a strategy for a European dimension to the GNSS that would contribute to the development of a Trans-European positioning and navigation network. It stated that "GNSS involve[d] major strategic, political, industrial, employment, security and defence interests for the EU".⁹⁶ It recognised that there were uncertainties not only at technical and financial level, but also at political level, such as the uncertainty about the willingness of European international partners to cooperate. It recalled that Member States, the user community (especially civil aviation) and military interests had already highlighted the "political and strategic dangers of reliance on a system controlled by one or more third countries".⁹⁷ It also warned that, allowing the establishment of a dominant position or virtual monopoly in the field would put European users in a position to become hostage of possible future charges or fees; that EU industry would be seriously constrained in the potentially lucrative market for services; and that "[t]here [were] serious problems of both sovereignty and security if Europe's navigation systems [were] out of Europe's control".⁹⁸ It reaffirmed that "[t]ransport, economical, industrial, security and defence issues [were] at stake".⁹⁹ All issues relating to the civil/military interface, including "[t]he possibility of dual use of GNSS", were being investigated subsequently.¹⁰⁰ A tripartite agreement between the European Community, ESA and Eurocontrol on a European contribution to the development of GNSS was signed and approved by the Council.¹⁰¹ The

⁹² Commission Communication, "Satellite Navigation Services: A European Approach", 14 June 1994 (COM(94) 248 final), p. 4, hereinafter referred to as 'Communication on GNSS (1994)'.

⁹³ Communication on GNSS (1994), p. 11.

⁹⁴ Communication on space (1996), p. 14.

⁹⁵ Council Resolution of 19 December 1994 on the European contribution to the development of a Global Navigation Satellite System (GNSS) (94/C 379/02).

⁹⁶ Commission Communication, "Towards a Trans-European Positioning and Navigation Network: including A European Strategy for Global Navigation Satellite System (GNSS), 21 January 1998 (COM(1998) 29 final), Executive summary, hereinafter referred to as 'Communication on GNSS (1998)'.

⁹⁷ Communication on GNSS (1998), p. iv.

⁹⁸ Communication on GNSS (1998), p. iv.

⁹⁹ Communication on GNSS (1998), p. 1.

¹⁰⁰ Communication on GNSS (1998), p. vi. See also pp. 19-20.

¹⁰¹ Council Decision 98/434/EC of 18 June 1998 concerning the Agreement between the European Community, the European Space Agency and the European Organisation for the Safety of Air Navigation on a European contribution to the development of a global navigation satellite system (GNSS).



Commission communication which followed, in 1999, called for an immediate, firm political commitment to developing an independent, but interoperable, European GNSS system called 'Galileo'.¹⁰² It affirmed, *inter alia*, that "[g]iving a political direction for Galileo would support the space and defence industry in their restructuring".¹⁰³ A subsequent Council Resolution endorsed the communication, stressing the increased independence which the development of a satellite navigation system would have brought "in one of the most important key technologies".¹⁰⁴ The Galileo programme was launched, just one month after the launch of the ESDP. The only reference to security made by the Council regarded the security of the system itself. Security issues were dealt with by the Security Board, set up in 2002 under the framework of the Galileo Joint Undertaking.¹⁰⁵ In the same year, recognising "the importance of security issues for the development of the GALILEO system", the Council agreed on the establishment of a "single and fully operational security authority to be set up by the Council".¹⁰⁶ The European GNSS Supervisory Authority (SA) was then established in 2004 as a Community agency.¹⁰⁷

1.3.2 The GMES Initiative

In 1998, at Baveno, Italy, another initiative for an EU space programme was launched.¹⁰⁸ In the wake of the Kyoto Protocol, it was presented as Global Monitoring for Environmental Security. One year later, following the entry into force of the Amsterdam Treaty and the launch of the ESDP, its name was changed to Global Monitoring for Environment and Security (GMES), acknowledging the evolution in the concept of security that was taking place not only in Europe but also in the international community.¹⁰⁹ The link between space, environment and security had already been acknowledged in 1995 by

ESA, EUMETSAT and the Commission in their joint 'Proposal for a European policy for Earth observation from space' presented at Toulouse during the ESA Ministerial Council. It was said that a European policy in that field should also "achieve strategic objectives, ensuring guaranteed access to data where essential to the *security* of Europe or to the preservation of its *environment*, maintaining and developing its capacity to enable it to play a global role".¹¹⁰ The link between environment and security had also been noted by the NATO Committee on the Challenges of Modern Society (CCMS), which had launched a Pilot Study on "Environment and Security in the International Context" less than one month after the presentation of the above-mentioned joint proposal.¹¹¹ The environmental movement and the outcome of the Rio de Janeiro summit of 1992 gave a new stimulus for reflection on the concept of security, which was in need of adaptation to the new international order. The entry into force of the Amsterdam Treaty and the launch of the ESDP in 1999 represented a turning point not only for the GMES initiative, but also for space in Europe *tout court*. The EU was making a concrete step forward in its integration process tackling for the first time defence issues, such as the creation of operational capacities for its future military operations. Furthermore, what was later defined as the 'comprehensive' (civil-military) approach of the ESDP seemed to mirror what was happening on a technological level in the defence-related industrial sector, and in particular in its space branch. The change in the meaning of the 'S' in GMES acknowledged the new political environment. From then on, the security dimension of space was addressed also at EU level, but not yet its defence dimension. For that to be realised another major event - the Iraq war - and, most of all, the entry into force of the Lisbon Treaty, were instrumental.

1.3.3 National and Bilateral Dual-Use Space Programmes

As already mentioned, reversing the lack of a capacity to take autonomous decisions and actions in the field of security and defence was a primary objective of the launch of the ESDP. Earth observation satellites were an important element of that capacity and major European powers responded by developing their own programmes.¹¹² Already active in

¹⁰² Commission Communication, "Galileo: Involving Europe in a New Generation of Satellite Navigation Services", 9 February 1999, p. iii, hereinafter referred to as 'Communication on Galileo (1999)'.

¹⁰³ Communication on Galileo (1999), p. 3.

¹⁰⁴ Council Resolution 1999/C 221/01 of 19 July 1999 on the involvement of Europe in a new generation of satellite navigation services - Galileo-Definition phase.

¹⁰⁵ Council Regulation (EC) No 876/2002 of 21 May 2002 setting up the Galileo Joint Undertaking.

¹⁰⁶ Council Conclusion on Galileo, 5-6 December 2002, in Council document 15121/02 (Presse 380), p. 36-37.

¹⁰⁷ Council Regulation (EC) No 1321/2004 of 12 July 2004 on the establishment of structures for the management of the European satellite radio-navigation programmes.

¹⁰⁸ Commission, "The GMES Partners: The Baveno Manifesto", prepared together with some European space agencies, Baveno, Italy, October 2008.

¹⁰⁹ Commission non-paper prepared for the Space Advisory Group, July 99 (SAG/99/3).

¹¹⁰ Communication on space (1996), p. 19.

¹¹¹ NATO Committee on the Challenges of Modern Society Pilot Study, "Environment and Security in an International Context. Executive Summary Report", *Environmental Change & Security Project Report*, Issue 5, Summer 1999.

¹¹² James & Gummett (1998), p. 5.

the field, France launched its Helios second generation programme (military) with the participation of Belgium, Greece, and Spain, while the development of exclusively national capabilities for space-based Earth observation became a top priority for countries like Germany and Italy.¹¹³ While the former launched the SAR-Lupe programme (military) and signed an agreement with France in 2002 for cooperation between their respective military programmes, the latter opted for a dual-use (civil-military) programme and also signed an agreement with France (Turin Agreement) for the development of the ORFEO joint programme, which would explore potential synergies between the two national programmes COSMO-SkyMed (based on radar technology and developed by the Italians) and Pléiades-HR (based on optical technology and developed by the French), in order to enhance respective Earth observation capabilities while economising on national resources.¹¹⁴ Both COSMO-SkyMed and Pléiades were designed as dual-use, thus with the clear intention of serving both the civilian and the military communities and being able to satisfy the quite different user requirements. The ORFEO joint programme represented the synthesis of all the elements that characterised the two parallel processes that started in Europe during the 1990s: the launch of an EU policy for security and defence, with the development of a civil-military crisis management, on one side, and the restructuring of the space industry, with convergence between civil and military production lines, on the other. There was a clear parallel between the two processes: a dual-use approach in the development of technology corresponded to a dual approach to crisis management and, from a certain perspective, this dual approach was, in both cases, a response to the lack of resources considered necessary to tackle the new political and economic challenges. As already mentioned, the post-Cold War political and economic environment was creating the conditions for the blurring of the traditional distinctions between civilian and military roles in the management of the crisis as well as creating the conditions for the blurring of the traditional distinctions between civilian and military industrial production

lines. The ESDP thus called for civil-military synergies but also for coherence in the use of resources, coordination in the development of capabilities, avoidance of duplication, and 'pooling and sharing', to best exploit the available resources, while the European space industry was promoting a convergence between civil and military space activities, so as to enlarge its customer base while reducing the fixed development cost and production costs.

COSMO-SkyMed and Pléiades were a response to all of that. They were designed as dual-use, so as to have both civil and military users and also to contribute to the GMES initiative, in the framework of the European space strategy (see paragraph 2.1.2), as clearly stated in the preamble of the Turin Agreement. They used radar and optical technology respectively and, in this way, they also responded to the ESDP call for coordination in the development of capabilities, coherence in the use of resources, and avoidance of duplication. The Italian programme was funded by the Ministry of Defence and the Ministry of Education, University and Research, so as to rationalise scarce national financial resources.¹¹⁵ COSMO-SkyMed (whose completion occurred in 2010 with the launch of the fourth satellite) was conceived to meet mainly institutional civil (environment, civil protection, oil and gas) and defence objectives (surveillance). The overall features of the system allow it to interoperate with other systems and to be used within the context of international agreements. The company responsible for the acquisition, processing and distribution of data for civil applications is e-GEOS, created jointly by the Italian Space Agency (ASI) and Telespazio. As regards Pléiades, the decision on its establishment was taken as a result of an in-depth study about the evolution of user needs.¹¹⁶ Sweden (3%), Belgium (4%), Spain (3%) and Austria (1%) also contributed to the programme. It was completed in 2012, following the launch of the second satellite. Spot Image is responsible for the commercialization of Pléiades' products. Previously owned by CNES, Spot Image is now part of EADS Astrium Services - Geo-Information.

More recently, Spain has also launched a dual-use satellite Earth observation mission

¹¹³ In a study prepared for the EU Parliament, Dr. Rebecca Johnson reported that "Germany's development of [the SAR-Lupe programme] was directly related to its experiences during the NATO action in Kosovo, particularly to difficulties in getting the US to share satellite intelligence of direct relevance to the protection and security of non-US allied forces. These experiences convinced Germany of the need for its own space based intelligence-gathering assets" (see Johnson (2006), p. 55).

¹¹⁴ The Turin Agreement was signed by France and Italy on 29 January 2001, hereinafter referred to as 'Turin Agreement (2001)'.

¹¹⁵ While the Italian Space Agency (ASI), which is responsible for development of the COSMO-SkyMed programme, is under the administrative supervision of, and funded by, the Ministry of Education, University and Research, the French Space Agency (CNES), responsible for the development of Pléiades, is under the administrative supervision and funding of both the Ministry of Defence and the Ministry of Higher Education and Research. Thus it is already funded by both civil and military sources.

¹¹⁶ See CNES website on Pléiades.



(the PAZ programme). PAZ will be owned and operated by the Spanish government satellite service operator, Hisdesat, which has signed a framework agreement with Astrium Services - Geo-Information for a joint technological development project which aims to establish a 'constellation approach' between PAZ and TerraSAR-X (a Public-Private Partnership initiative between DLR and Astrium Services – Geo-Information division).

In the field of satellite communications, another French-Italian dual-use programme (the ATHENA-FIDUS programme) is now in its development phase. The result of a 2006 agreement between CNES and ASI, it is expected to be launched in 2013 and will be used by the military forces of Belgium,

France and Italy and by French and Italian Civil Protection services. It is jointly funded by CNES, the French Ministry of Defence, ASI, the Italian Ministry of Defence and the Belgian Ministry of Defence. The programme is considered another step towards 'Defence Europe' or 'Europe de la défense'.

All these dual-use space programmes attest to the abovementioned convergence of interests between governments and industry in the field of space activities, which is very pronounced at national level. However, this convergence applies also at EU level (see paragraph 2.2.1) and has affected the progress of the EU space policy.

2. The Building Up of ‘Space for Security’

2.1 “Space Has a Security Dimension...”: The Space Sector and the Promotion of the Security Dimension of Space at EU Level¹¹⁷

2.1.1 ESA and the Wise Men Report (2000)

In the process of building up ‘space for security’, meaning the process which led to the explicit inclusion of a space component into the ESDP, an important role has been played by both the European Space Agency (ESA) and the European Commission. In 1996, the Commission urged to “take into account the space dimension in the formulation and implementation of the policies mentioned in the Treaty”.¹¹⁸ Among these, the EU treaties included the progressive framing of a common defence policy, within the Common Foreign and Security Policy, and the establishment of the ESDP did indeed represent a first step in that direction. On 31 March 2000, ESA Director General, Antonio Rodotà, sent a letter to Carl Bildt, former Swedish prime minister, asking him to participate in a Wise Men Group, together with Jean Peyrelevalde and Lothar Späth, in order to provide him with “independent advice on the evolution of the European Space Agency”.¹¹⁹ He said that converging developments, such as the increasing use of space systems for implementing environmental, transport and communication policies, on one hand, and the rapidly evolving progress towards the extension of EU competence also to defence, the enlargement of its membership and reforms of its operating procedures, on the other hand, were leading to closer relations between ESA and the EU. Among other things, he asked advice on the consequences of this closer relationship for “synergy between civil and defence aspects”.¹²⁰ The answer arrived a

few months later in a report entitled “Towards a Space Agency for the European Union” (the so-called ‘Wise Men Report’).¹²¹ The three wise men recommended a process of institutional convergence between ESA and the EU, which did not exclude “bringing the present ESA within the treaty framework of the European Union”.¹²² They also recommended exploiting the effectiveness demonstrated by ESA in responding to the needs of its members, extending it also “to programmes related to the development of a European Defence Policy *considering the dual aspects of technology, systems and industry*”.¹²³ They affirmed that “ESA should be the space agency of Europe [...] extending its fields of actions to defence requirements”.¹²⁴ Considering that space systems were growing in importance for both society and markets world-wide, Europe needed to be independent from non-European space systems in any strategic and commercial areas and had to aspire “to become an alternative to the US for the rest of the world, as well as to be able to cooperate with the US on a balanced basis”.¹²⁵ Given the gap in public investments between US and European countries (estimated, in 1998, to be 26 billion dollars for the US against 4.7 billion for European countries), “[e]mbarking on development of a European defence system including also a space component [would] also provide a significant part of European public investment that is missing today compared with the US”.¹²⁶ The three wise men also affirmed that “without a clear space component, evolution towards the European Security and Defence Policy [would] be incomplete”; that programmes of satellite observation, communications and the Galileo programme, all have a security dimension; and that space infrastructures necessary for civilian (public and/or commercial) applications increasingly move together with those necessary for security needs.¹²⁷ Thus, they saw it “as logical to

¹¹⁷ The quotation refers to Commission’s motto: “[s]pace has a security dimension and security has a space dimension” (see paragraph 2.1.4).

¹¹⁸ Communication on space industry (1996), p. 2.

¹¹⁹ Rodotà, Antonio, letter to Carl Bildt, 31 March 2000, hereinafter referred to as ‘Rodotà’s letter (2000)’.

¹²⁰ Rodotà’s letter (2000).

¹²¹ Bildt, Carl, Jean Peyrelevalde and Lothar Späth, “Towards a Space Agency for the European Union”, report to the ESA Director General (‘Wise Men Report’), November 2000, hereinafter referred to as ‘Wise Men Report (2000)’.

¹²² Wise Men Report (2000), p. 7.

¹²³ Wise Men Report (2000), p. 7, emphasis added.

¹²⁴ Wise Men Report (2000), p. 8.

¹²⁵ Wise Men Report (2000), p. 8.

¹²⁶ Wise Men Report (2000), p. 9.

¹²⁷ Wise Men Report (2000), p. 9.



use the capabilities of ESA also for the development of the more security-oriented aspects of the European Space Policy".¹²⁸ Since the EU's efforts in the field of security focused on tasks of peace strengthening, which comprises also civil and environmental emergencies, they did not see any problem with the Convention of ESA.

The three wise men compared the situation of the European space sector with that of the United States and highlighted what was perceived as the main challenge to space in Europe in that period: the strong political commitment of the American government to ensuring for itself a "leadership role in space matters throughout the world" and "a robust US space industry and a strong forward looking technology base", as expressed in the National Space Policy of 1996 and in the space policy of the Department of Defence of 1999 respectively.¹²⁹ The three wise men stressed the fact that, in the US, space was addressed at the highest political level and that different but coordinated policies supported the US leadership role. Among those policies, they also identified dual-use policies, which promoted the capitalisation of defence-developed technologies. In comparison, Europe lacked coordination between national and EU levels, and between space policies and the other policies indirectly related to space. "[S]ynergies between civilian and military programmes exist only at national level, while a European defence policy addressing space systems is still to come".¹³⁰ More generally, the three wise men called for a considered European answer and for the integration of European space activities into a wider political and economic strategy. They saw the complementary decision of the ESA Council and the EU Council to develop a joint European space strategy by the end of that year as a valuable effort which had allowed the first steps to be taken towards such integration.

2.1.2 The Council's Endorsement of the European Space Strategy (2000): Still only a Hesitant Link Between Space and the ESDP

On 2 December 1999, the Council put 'Space' on its agenda for the first time and called for a comprehensive space strategy which, in addition to responding to the challenges in

¹²⁸ Wise Men Report (2000), p. 9.

¹²⁹ For the first quotation, see Bildt, Carl, Jean Peyrelevade and Lothar Späth, "The European Space Sector in the World", Annex I to the Wise Men Report (2000), p. 3, hereinafter referred to as 'Annex I to the Wise Men Report (2000)'. For the second quotation, see US Department of Defence, "Space Policy", Directive Number 3100.10, 9 July 1999, p. 6.

¹³⁰ Annex I to the Wise Men Report (2000).

the fields of telecommunications, transport and environment, considered also "the importance of space technologies in the context of security matters" and took into account the restructuring of the European space industry.¹³¹ A European space strategy, jointly developed with ESA, was consequently issued in late 2000 by a Commission communication.¹³² It clearly stated that "[s]pace presents a security dimension, which has thus far only been dealt with, at European level, in the context of the WEU".¹³³ The document highlighted that the new steps taken at Helsinki (the development of the ESDP and the forthcoming inclusion of the WEU into the EU) were "prompting the *European Union to take space capabilities into account, for instance in decision-making for the planning and monitoring of the Petersberg Tasks*".¹³⁴ In order to respond to the call made at Helsinki for an optimization of Europe's intelligence assets, "the EU should be able to call on a range of military (initially established by the WEU) and civil (established by the EU) means for intelligence-gathering and crisis management" and that the "exploitation of dual-use possibilities", together with member states' efforts, "could provide significant benefits".¹³⁵ It continued by stating that GMES could provide Europe with coherent global observation and monitoring capabilities and that the Satellite Centre, soon to be transferred to the EU, could be a true asset, "provided [it] maintain[ed] the dual nature of its tasks".¹³⁶ Notwithstanding all these premises, the Council Resolution which endorsed the European space strategy referred only vaguely to the relationship between space and ESDP. It limited itself to recommend that in the work of the Task Force, to be set up as soon as possible by the Commission in cooperation with the ESA Executive, "account [should] be taken of developments regarding the European security and defence policy".¹³⁷ The

¹³¹ Council Resolution of 2 December 1999 on developing a coherent European space strategy (1999/C 375/01). According to the Report from the Commission - JRC Annual Report 1999 (COM/2000/0366 final), the insertion of 'Space' on the agenda of the Council was a direct result of the Commission working document entitled 'Towards a coherent European approach for Space' (SEC(1999)789).

¹³² Commission Communication, "Europe and Space: Turning to a new chapter", 27 September 2000 (COM(2000) 597 final), hereinafter referred to as 'Communication on space (2000)'. The communication was drafted to answer to the request made by the Council in the 2 December 1999 Resolution.

¹³³ Communication on space (2000), p. 2.

¹³⁴ Communication on space (2000), p. 2, emphasis added.

¹³⁵ Communication on space (2000), p. 16.

¹³⁶ Communication on space (2000), p. 16.

¹³⁷ Council Resolution of 16 November 2000 on a European space strategy (2000/C 371/02), point 11, hereinafter

word 'security' was mentioned only once in the text and it referred to the role of GMES. However, it was preceded by the adjective 'civil' ("civil security"), as a clear way to restrict the area of application of the "S" of the acronym.¹³⁸

The same restriction to civil security was applied to the use of space systems at Community level by the report of the Joint Task Force, which was released one year later.¹³⁹ However, it also stated that the interpretation of the concept of security had significantly enlarged to encompass natural disasters, planetary environmental risks, climate change, large population and refugee migration, and acts of terror against populations, and that space technologies, which "have widened their potential to effectively serve security policy objectives", could support all the policies which address those threats, including the CFSP, and contribute to the latter even more than was already the case, when the Union so decided.¹⁴⁰ The report indeed acknowledged that the Union had already made a step in that direction with the transformation of the WEU Satellite Centre into its own agency, under the Council. It affirmed that, if it wanted to fully play a role as a major space power, Europe could not afford to address space issues in a dispersed and fragmented way, and that it had to support a genuine European space policy, with sustained public and private commitment, a closer and formal relationship between the EU and ESA, and endorsement at European Council level, for "only Heads of State and Governments [could] consider the European Space Policy in full, including security and defence aspects".¹⁴¹

2.1.3 The STAR 21 Report and the Recommendation to Develop a European-Based Space Defence and Security Capability for Surveillance, Reconnaissance and Command&Control

An important brick towards the building up of 'space for security' was the STAR 21 Report, released in 2002.¹⁴² Prepared by the Euro-

referred to as 'Council Resolution on European Space Strategy (2000)'.

¹³⁸ Council Resolution on European Space Strategy (2000), point 7.

¹³⁹ EC-ESA Joint Task Force, "Towards a European Space Policy", European Commission and European Space Agency Report, report presented by a Commission Communication, 7 December 2001 (COM(2001) 718 final), p. 6, hereinafter referred to as 'Joint Task Force Report (2001)'.

¹⁴⁰ Joint Task Force Report (2001), p. 2 and p. 6.

¹⁴¹ Joint Task Force Report (2001), p. 23.

¹⁴² European Advisory Group on Aerospace, "STAR 21: Strategic Aerospace Review for the 21st century: Creating a coherent market and policy framework for a vital Euro-

pean Advisory Group on Aerospace, set up the previous year and comprised of representatives from industry, the Commission, the Parliament and the Office of the EU High Representative for the CFSP/Secretary General of the Council (and also Secretary General of the WEU), Javier Solana, it stated that space applications could support several objectives under the CFSP. It urged Europe to address member states' security and defence space technology needs at EU or multilateral level. The rapid decline that the telecommunication market and, consequently, the launchers' market were experiencing at that moment, on one side, and the increasing public investments of the US in the space industry and its declared policy goal of global dominance in space equipment and applications, on the other, were endangering the viability of the European space industry and putting strong pressure on it. The consequences of not taking action at EU or multi-lateral level would have led to the loss of European independence in key strategic and commercial satellite technologies, both civil and military, as well as in access to space.¹⁴³ The members of the group described the civil and military sides of the aerospace industry as closely intertwined and affirmed that "[s]ustaining a viable aerospace industry to serve the needs of civil markets is intimately linked to maintaining its capabilities in the security and defence fields – and vice versa".¹⁴⁴ Furthermore, "the different cycles of civil and defence programmes allow companies to balance their development resources more effectively". Finally, it recommended to "[d]evelop a fully European-based space defence and security capability for surveillance, reconnaissance, command/control including telecommunications and positioning".¹⁴⁵

2.1.4 The Green and White Papers: The First Formal Steps towards the EU Level Answer the Space Sector Had Been Calling for Since the Middle of the 1990s

In order to answer the call for the adoption of a White Paper on space, made in 2002 by a European Parliament resolution, in 2003 the Commission issued a Green Paper to start the necessary debate on the matter. The clear purpose of the debate was to provide the EU level answer that the space sector had been asking for since the middle of the 1990s. The document affirmed that, since "[n]o European

pean industry", European Commission and Enterprise Publications, July 2002, hereinafter referred to as 'STAR 21 Report (2002)'.

¹⁴³ STAR 21 Report (2002), p. 35.

¹⁴⁴ STAR 21 Report (2002), p. 14.

¹⁴⁵ STAR 21 Report (2002), p. 37.



nation is capable of independently maintaining a space policy at the *necessary* level" [meaning, a level necessary to support a competitive industry], it was time for Europe to decide which level of ambition it wanted to aspire to in the field.¹⁴⁶ Given the difficulties in the communication market, the enormous disparity in public resources devoted to the sector between the United States and all European countries put together, and the mounting capability of several other regions of the world, "the equilibrium of the economic model adopted for space development in Europe until [then], associating a strong commercial element to support from public authorities, [was] markedly reduced [and] compromised".¹⁴⁷ The Green Paper warned against the appropriateness of a national response at a time when European industry was consolidating at transnational level. It acknowledged that space has a more strategic, rather than commercial, nature and that, for this reason, states play a fundamental role. However, no European nation could remain a competitive space power on its own and the Green Paper implicitly suggested that, by developing military space programmes exclusively at national level and without coordination, European states were limiting their own ambitions as set out in the ESDP. The Green Paper recalled, in fact, the results of the European Capabilities Action Plan (ECAP) Report and underlined that "to a certain extent, the critical shortcomings of current crisis management are directly linked to a space technology capability".¹⁴⁸ Recalling the STAR 21 Report recommendation on the development of a fully European space defence system, it welcomed the first step taken in that direction by a number of national general staffs which had elaborated a joint definition of "Besoins Opérationnels Communs" (BOC, meaning 'common operational needs') for a global European satellite observation system for security and defence purposes, potentially extended to other partners.¹⁴⁹ Finally, it affirmed that, since "there are many common features of civil and military space technologies, [...] it is appropriate to combine resources in the most effective manner, having regard to improvements in the performance of commercial systems, budgetary constraints in Europe and the technological gap between the two sides of

the Atlantic".¹⁵⁰ Thus, the Green Paper suggested, the GMES initiative should complement the first step taken with the BOC.

On the basis of the results of the consultation process, the Commission elaborated an action plan which was presented in a White Paper in November 2003. The call for an increase in overall expenditure constitutes the *Leitmotiv* of the entire document. The White Paper may be considered the apex of the process of promotion of space for security at EU level. It was prepared in the wake of the developments that led to the European Council decision to enhance cooperation in military space also at EU policy level (see paragraph 2.2.1) and, also in its language, it reflected the changing political environment. The Commission was confident that "[t]he Union [was going] to assume a larger role in the world through a stronger Common Foreign and Security Policy (CFSP) supported by a European Security and Defence Policy (ESDP)".¹⁵¹ Space technologies and applications were presented as a valuable contribution to key policy goals of the EU and, among those, to "a stronger security and defence for all".¹⁵² The Commission then launched the motto: "[s]pace has a security dimension and security has a space dimension".¹⁵³ According to the White Paper, no CFSP and ESDP would be credible and effective without autonomous space communication, positioning and observation systems providing global information and thus allowing informed decision-making. However, mobilizing EU decision-making to strengthen space technologies to comply with security and defence policy requirements was still considered a challenge by the Commission. It reminded, once again, that no one single member state would be able to develop and support the full range of space capabilities necessary to provide security to its citizens on its own and that cooperation at EU level would provide better value for money. It suggested developing such cooperation in a way "to ensure dual use of space assets in function of user requirements defined at EU level", for most space systems are "inherently capable of *multiple use*".¹⁵⁴ It also recalled that the Military Committee had

¹⁴⁶ Commission Green Paper, "European Space Policy", 21 January 2003 (COM(2003) 17 final), p. 4, hereinafter referred to as 'Green Paper (2003)'.

¹⁴⁷ Green Paper (2003), p. 6.

¹⁴⁸ Green Paper (2003), p. 24, referring to the findings of the ECAP (European Capabilities Action Plan) Report released on 1 November 2002.

¹⁴⁹ Besoins Opérationnels Communs (BOC), jointly defined by Belgium, France, Germany, Greece, Italy and Spain.

¹⁵⁰ Green Paper (2003), p. 24.

¹⁵¹ White Paper (2003), p. 9.

¹⁵² Commission White Paper, "Space: a new European frontier for an expanding Union. An action plan for implementing the European Space Policy", 11 November 2003 (COM(2003) 673 final), p. 6, hereinafter referred to as 'White Paper (2003)'.

¹⁵³ White Paper (2003), p. 17.

¹⁵⁴ White Paper (2003), p. 17, emphasis added. It is interesting to note that, from the adoption of the Green Paper, the term 'multiple' would substitute, little by little, the term 'dual' of the prepositional phrase 'dual-use' in the EU documents.

already acknowledged the efficiency of space assets for crisis management operations.

In order to develop a comprehensive EU space-based defence and security capability (to which the Commission was ready to contribute with an overall assessment of existing capacities and future requirements, and with the identification of the necessary additional investments), the White Paper enumerated the fields where space capabilities were still required. They encompassed global monitoring, positioning, navigation and timing and communication, signal intelligence, early warning and space surveillance. Regarding global monitoring, a large part of the security and defence requirements were planned to be fulfilled by GMES services while the BOC multinational initiative provided a useful model for a European approach to ground segments and infrastructures. No mention was made of possible military uses of Galileo. The recommended actions comprised the establishment of an EU dedicated working group to produce a report on the multiple-use capabilities needed by the EU; on the link with the soon-to-be established European Defence Agency; on the organisation of access to satellite imagery; and on the potential role of the Satellite Centre. As concerns space technology, the Commission called for an increase in public spending and for an optimised and coordinated use of R&D resources, leading to "joint civil and defence technology R&D", in order to fully exploit the "dual nature of space technology", since technology gaps were jeopardising independence and worldwide competitiveness of Europe.¹⁵⁵ Public support for R&D was considered imperative. Although mechanisms in place in support of short-term competitiveness were successful, Europe was not as well equipped for strategic technological independence in the longer term. According to the White Paper, "Europe depend[ed] on others for some critical space components" and "[i]t [was] at the mercy of stringent US export-controls regulations".¹⁵⁶

Furthermore, limited investments in defence related space activities were leading to technological deficiencies. It mentioned the European Space Technology Master Plan (ESTMP) initiative, which was meant to coordinate and harmonize ESA, the EU, national agencies, research institutes and industry towards the identification of next-generation space technology requirements, corresponding gaps and current overlaps, and suggested, among other things, that the process should be expanded to both civil and defence R&D, in order to maximize synergies and use Euro-

pean resources more efficiently. Regarding the governance issue, a two-phased approach was envisaged in which ESA should act as the implementing agency of the Union regarding space matters until the foreseen entry into force of the Constitutional Treaty, after which ESA should modify its Convention to allow the inclusion of the Agency into the EU framework. In its conclusions, the Commission stated that "[s]pace is a must for an enlarged Union and the EU is a key to the further development of space in Europe", and that the issues presented by the White Paper had to be discussed and decided upon in the relevant European institutions.¹⁵⁷

2.15 The ESA Position Paper on Its Relation with the Defence Sector: "Every Activity that is Lawful for States...is also Lawful for ESA"

A few weeks after the publication of the White Paper, and three years after Antonio Rodotà's letter to Carl Bildt, the ESA Council presented a paper to express its position on relations between the Agency and the defence sector.¹⁵⁸ The Framework Agreement, the purpose of which was to foster the use of space assets in support of Community policies (creating a direct link between demand and supply), had been signed few days earlier, on 25 November 2003, while the draft text of the Treaty establishing a Constitution for Europe (see next paragraph), which presented a shared competence on space and gave a legal basis to the ESDP, was under discussion.¹⁵⁹ ESA was ready to take up the challenges and the opportunities the European political environment was providing. Specifically regarding the ESA Convention, the position paper stated that the notion of 'peaceful purposes' contained in Article II "cannot have an independent meaning [...] but it follows the other international legal instruments regulating the use of space [...] commonly interpreted to permit using space for non-aggressive military uses respecting the terms of the UN Charter".¹⁶⁰ It continued that "[t]he notion of 'peaceful purposes' in the ESA Convention reflects the international space law binding on all relevant actors in space activities" and, thus, "[e]very activity that is lawful for States under the international space law regime is also lawful for ESA".¹⁶¹

¹⁵⁷ White Paper (2003), p. 40.

¹⁵⁸ ESA Council, "Position paper on ESA and the defence sector", 1 December 2003 (ESA/C(2003)153), hereinafter referred to as 'ESA position paper on defence (2003)'.

¹⁵⁹ See Article I-14 and Article III-254 of the text of the Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004.

¹⁶⁰ ESA position paper on defence (2003), pp. 7-8.

¹⁶¹ ESA position paper on defence (2003), p. 8.

¹⁵⁵ White Paper (2003), p. 27.

¹⁵⁶ White Paper (2003), p. 26.



2.2 “...and Security Has a Space Dimension”

2.2.1 The Events of 2003 and the Decision to Include the Security and Defence Aspects of CFSP and ESDP in the Developing European Space Policy

If the promotion of the security dimension of space at EU level had reached its climax with the White Paper, an important drive for its recognition by the European security ‘stakeholders’ were the events of 2003. With the adoption of the Berlin Plus Arrangements, early in 2003, another major step had been made towards the complete inclusion of the WEU structures into the EU. The EU could access, when necessary, NATO assets and capabilities for the conduct of its crisis management operations. As a consequence, the EU could launch its first military operation and its first civil mission. The Nice Treaty entered into force in February. It had been signed two years earlier and represented a step back in terms of defence matters. All references to the WEU had been repealed and enhanced cooperation having military or defence implications forbidden (see Annex). However, following the events of 11 September, 2001, the Laken European Council had already acknowledged its inadequacy for the new political environment and a Convention on the Future of Europe (so-called ‘European Convention’), with the mandate to produce a draft of a new EU treaty for the 2004 Intergovernmental Conference (this time, a ‘constitution’), was established in December of that same year.¹⁶² In April 2003, EU Member States and ten Eastern European countries signed the Treaty of Accession which would have led to a Community of twenty-five states in 2004. The European Convention ended its work in July 2003 and presented a draft Treaty establishing a Constitution for Europe which, had it been adopted, would have provided the EU with a stronger competence on security and defence matters, a legal base for the ESDP and for the comprehensive approach to crisis management, and a shared competence on space (see Annex). However, the event that most affected decisions concerning space, which were taken during that year, occurred in March 2003 and consisted in the outbreak of the Iraq War. As highlighted by Pasco, “the controversy over the alleged presence of weapons of mass destruction [...] only reinforced the feeling that a fully autonomous intelligence space system [had to] remain at the top of the pri-

¹⁶² European Council, “Laken Declaration on the Future of the European Union”, Laken, 14-15 December 2001.

ority list in Europe”.¹⁶³ On 19-20 May, at the Brussels Capability Conference, a Project Group on Space Assets was set up within the second phase of the European Capability Action Plan (ECAP).¹⁶⁴ On that occasion, the Council explicitly recognised “the importance of space applications and the developing space policy to enhance the EU capabilities to carry out crisis management”.¹⁶⁵ The Political and Security Committee, which had contributed to the consultation process launched by the Green Paper, also made the same recognition on 25 June and again on 9 December, when it affirmed that further and regular ‘interpillar’ reflection was needed “to ensure that the security and defence aspects of CFSP and ESDP are taken into account during the deliberations on an EU Space Policy and its associated programmes”.¹⁶⁶

2.2.2 The European Security Strategy (ESS) and the Blurring of the Distinction between the Concepts of Internal Security (Civil) and External Security (Military)

The year 2003 ended with the adoption of the European Security Strategy (ESS): “A secure Europe in a better world”. It provided a conceptual framework for the EU approach to crisis management and, although space was not mentioned, it would even further stimulate the search for civil-military synergies in space activities and technology development. The ESS indeed provided for an implicit link between the EU dual approach to security and to crisis management and the dual-use (now, multiple-use) approach to space technology, which would be exploited for the entire following decade. Drawn up under the authority of the EU’s High Representative for the Common Foreign and Security Policy, Javier Solana, and adopted by the European Council of 12 and 13 December 2003, the ESS represents an important step in the evo-

¹⁶³ Pasco, Xavier, “The European “Spacepower”? A Multifaceted Concept”, in Lutes, Charles D. and Peter L. Hays (Ed.) with Vincent A. Manzo, Lisa M. Yambrick, and M. Elaine Bunn, “Towards a Theory of Spacepower. Selected Essays”, Chapter 25, Institute for National Strategic Studies, National Defence University Press, Washington DC, USA, 2011.

¹⁶⁴ The European Capability Action Plan (ECAP) was launched at the Capability Improvement Conference (CIC), held in Brussels on 19 November 2001. In its first phase, nineteen panels, covering the vast majority of the most significant shortfalls, were activated and all the EU member states participated. The second phase, with the establishments of the Project groups addressing the whole spectrum of capabilities shortfalls, was launched during the Brussels Capability Conference of 19-20 May 2003.

¹⁶⁵ ESDP Presidency Report (2003), p. 10.

¹⁶⁶ Council, “European Space Policy: “ESDP and Space””, 16 November 2004 (11616/3/04), p. 2.

lution of the EU role as a global player.¹⁶⁷ If the Balkans wars had been the reason behind the launch of the European Security and Defence Policy (ESDP), the Iraq War may be considered the engine that led to the elaboration of the ESS.¹⁶⁸ The Iraq War had shown once again the lack of unity among European countries when confronted with foreign policy decisions. The ESS represented an attempt to rally EU countries around common foreign and security goals. It called for a more active, more coherent and more capable European Union. While it reassured the American ally by affirming that the Atlantic Alliance is irreplaceable, it also stated that the primary responsibility for maintaining international peace and security lies within the UN Security Council.¹⁶⁹

The European Security Strategy elaborated a new, comprehensive approach to security which blurs the distinction between the concepts of internal and external security. It reflected not only the new international trends concerning security, as they were developing in the new political environment of the post-Cold War era, but also the peculiar status of the EU countries' borders, which are neither really external nor really internal to the EU. Indeed, the ESS stated that "[t]he post-Cold War environment is one of increasingly open borders in which the internal and external aspects of security are indissolubly linked"; that "[l]arge-scale aggression against any [EU] Member State is now improbable", while the new threats which Europe faces are "more diverse, less visible and less predictable"; and that "none of the new threats is purely military [...] nor can any be tackled by purely military means. Each requires a mixture of instruments".¹⁷⁰ The ESS endorsed and further promoted what one month earlier had been defined by the Council as the EU 'comprehensive' (civil-military) approach to crisis management.¹⁷¹ The threats to security identified by the ESS encompassed not only terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure, and organised crime (which are identified as the key threats) but also the causes which often lead to those threats, such as poverty, disease, and competition for natural resources. It established a link between security and development and stated that security is not attainable without sustainable development, which encompasses

political, economic and social aspects, and vice versa. Finally, the causes of the crisis were, in turn, expected to be aggravated by global warming. Five years later, climate change would indeed be included among the main threats to security by the Report on the Implementation of the European Security Strategy, issued at the end of 2008.¹⁷² It would be described as a 'threat multiplier', as "natural disasters, environmental degradation and competition for resources exacerbate conflict, especially in situations of poverty and population growth, with humanitarian, health, political and security consequences, including greater migration".¹⁷³ The ESS also stated that "[i]n an era of globalisation, distant threats may be as much a concern as those that are near at hand" and, for this reason, "the first line of defence will often be abroad".¹⁷⁴ It concluded by affirming that "[a]n active and capable European Union would make an impact on a global scale".¹⁷⁵

2.2.3 The Council's "European Space Policy: 'ESDP and Space'" and the Parallel between the EU Comprehensive Approach to Crisis Management and the 'Multiple' Use of Space Assets

After the decision to take into account CFSP and ESDP needs in the developing European space policy, and on the basis of the recommendations made by the White Paper, Council bodies started to work on possible security and defence aspects of the future space programme of the European Commission. "It was felt useful that the EU Council developed a Space Policy, as a guideline for the coordination of all actions in the field of the use of space assets for ESDP purposes".¹⁷⁶ As a result, on 16 November 2004 (less than three weeks after the signing in Rome of the Constitutional Treaty), the Council approved its own space policy entitled "European Space Policy: "ESDP and Space"". However, as was clearly stated, this did not represent an attempt to design "a stand-alone "Defence" space policy", rather to provide guidelines for the inclusion of ESDP needs in a 'global' EU space policy and its corresponding space programme, in line with the EU comprehensive civil-military approach to crisis manage-

¹⁶⁷ EU, "A Secure Europe in a Better World: European Security Strategy", 12 December 2003, hereinafter referred to as 'ESS (2003)'.

¹⁶⁸ Duke (2011), p. 7.

¹⁶⁹ ESS (2003), p. 6.

¹⁷⁰ ESS (2003), p. 7.

¹⁷¹ Council, "Civil Military Coordination (CMCO)", 7 November 2003 (14457/03).

¹⁷² EU, "Report on the Implementation of the European Security Strategy: Providing Security in a Changing World", 11 December 2008 (S407/08), p. 5, hereinafter referred to as 'ESS implementation report (2008)'. It is important to note that the implementation report was issued after the signing of the Lisbon Treaty (see next chapter).

¹⁷³ ESS implementation report (2008), p. 5.

¹⁷⁴ ESS (2003), pp. 6-7.

¹⁷⁵ ESS (2003), p. 14.

¹⁷⁶ ESDP and Space (2004), p. 2.



ment.¹⁷⁷ “ESDP and Space” indeed represents the first EU document where an explicit parallel between civil-military synergies in the approach to crisis management and those in the use of space assets is made. It affirms that the “EU approach to crisis management emphasises the existing and necessary synergies between civilian and military actors” and that “a global space policy should emphasise the same synergy between civilian and military assets”.¹⁷⁸

As the development of dual-use space programmes had revealed the convergence of interests between governments and space industry at national level, in the same way, “ESDP and Space” revealed that the same convergence was finally taking place also at EU level. With the acknowledgment of the importance of space assets for the conduct of both civilian and military crisis management missions (although specifying that the ultimate choice between space and non-space assets should be made on cost-effectiveness, performance, and actual availability basis), the Council gave its political support to the call made by the space sector, thus providing a response “to the political-economic necessities posed to the European space industry by economic internationalization and transatlantic competition”.¹⁷⁹ Recalling the European Security Strategy and the need for a more active, more coherent and more capable European Union, ready to share responsibility for international security, the Council’s space policy stated that space assets could significantly contribute in providing “the best affordable capabilities for autonomous political assessment, sound decision-making, and effective conduct of action” and should, therefore, be considered alongside other means.¹⁸⁰ Considering the ESS analysis of threats and its positioning of the first line of defence far abroad, more than on the EU borders, and given the fundamental importance of having assured access to reliable information, it presented “the advantage of unrestricted access over potential or actual areas of operation and areas that are otherwise difficult to gain access to for political reasons” as the added value of space assets for CFSP/ESDP.¹⁸¹ It recalled the Headline Goal 2010, endorsed by the European Council of 17-18 June 2004, which included the use of space assets and referred to the develop-

ment of a European Space Policy by 2006. It also mentioned the risks associated with too much reliance on space assets and that, in order to avoid the resulting vulnerability for both security and the economy, appropriate measures, such as space surveillance, space-based detection and monitoring and identification of illicit activities, should be contemplated when considering European security. The Council affirmed that, “although not driven by military needs, almost all space programmes have a *multiple-use* capacity that could provide solutions to some military needs” and that “Galileo, EGNOS, GMES and SATCOM [...] have the potential to contribute to civilian and/or military crisis management”.¹⁸² This was the first time that Galileo was explicitly associated with military uses by the Council, another confirmation that the political environment had changed. A few months earlier, the Council had established the European GNSS Supervisory Authority, which had been tasked, *inter alia*, with the management of all aspects concerning the safety and security of the system.

2.2.4 “ESDP and Space” and the Four Ways to Allow the EU to Have Access to Space Assets for ESDP Purposes

Following the same imperatives that were guiding the progress of the ESDP (civil-military synergies, coordination of national and EU efforts in the development of capabilities, avoiding additional costs and unnecessary duplications, pooling and sharing), the Council’s space policy enumerated four different ways that would allow the EU to have access to space assets for ESDP purposes, when required. They consisted of: 1) making use of existing military assets and of multiple use capacities offered by existing civilian programmes in EU member states; 2) making use of already existing assets belonging to commercial companies, although only if they are able to satisfy integrity requirements and availability of services also during times of crisis; 3) taking advantage of “multiple use capabilities inherent to existing civilian programmes planned in the framework of the Community programme” (in this regard the Council explained that many of the requirements which fulfil civilian, security and defence needs “are met by identical technological solutions”; that “[s]atellite imagery can be used either to monitor a crises or to assess a humanitarian urgency or an ecological disaster”; that ESDP requirements should be considered at an early stage of the programmes; and that “[m]ultiple use technologies should be used to the maximum extent

¹⁷⁷ ESDP and Space (2004), p. 8.

¹⁷⁸ ESDP and Space (2004), p. 8.

¹⁷⁹ Oikonomou, Iraklis, “The Political Economy of ESDP-Space. The Case of Global Monitoring for Environment and Security (GMES)”, paper presented at the Third Pan-Hellenic Conference on International Political Economy, Harokopio University, 16-18 May 2008, p. 10.

¹⁸⁰ ESDP and Space (2004), p. 11.

¹⁸¹ ESDP and Space (2004), p. 4.

¹⁸² ESDP and Space (2004), p. 9.

in order to avoid additional costs and unnecessary duplications"); and 4) finally, when security of access is reasonably guaranteed, and in order to avoid duplication, considering the possibility to access space assets of third parties through the signing of appropriate agreements.¹⁸³ In its conclusions, the Council reiterated the need for pooling and sharing capabilities of both EU and member states, "drawing on multiple use technology and common standards", in order to achieve significant cost-effectiveness over time.¹⁸⁴ It suggested the adoption of a comprehensive roadmap which should have included the specification of ESDP requirements on the basis of the Headline Goal 2010 and of the initial study made by the Military Committee; the conclusion of arrangements between EU and member states allowing the EU to access existing and planned military systems of the member states or their data; the identification, by the Commission and the member states, of possible multiple use capabilities of their civilian systems under development, on the basis of ESDP requirements, to be provided to them once identified and agreed upon; the establishment of a permanent inter-pillar dialogue to ensure coherence of requirements from the initial phases of all space programmes, avoiding unnecessary duplication and spending while ensuring the respective institutional framework, competencies and prerogatives; the development of a global EU space policy including ESDP requirements; the update of contracts between the Satellite Centre and commercial companies; the exploration of possible agreements with third parties; and finally, the harmonization of military requirements, in the longer term, through, for instance, the European Defence Agency (EDA).

The European Defence Agency (the setting up of which had been envisaged by the OCCAR Convention, already in 1996) had been finally established a few months earlier with a Council Joint Action which referred to the fact that the Agency had been mentioned not only by the European Security Strategy but also by the draft Treaty establishing a Constitution for Europe, thus implicitly referring to the Constitution as its future legal basis.¹⁸⁵ It was created to support the Council and the Member States in the improvement of the EU's defence capabilities in the field of crisis management and to sustain the ESDP. Among its functions and tasks, the EDA was also expected to work "in liaison with the Commis-

sion to maximise complementarity and synergy between defence and civil or security related research programmes".¹⁸⁶

On the basis of the initial steps indicated by the Council's space policy, a roadmap was established in 2005 in consultation with the relevant Commission Services, EDA and the Satellite Centre.¹⁸⁷ The document presenting the roadmap stated that it was "based on the assumption that civilian and military needs for all actions in the field of the use of space assets for ESDP purposes are compatible, with potential for synergies", an assumption which had also been confirmed by the report of the Panel of Experts on Space and Security (the so-called 'SPASEC Report') issued in March of that same year.¹⁸⁸ The SPASEC Report had, in fact, defined space as "a strategic and multiple-use technology by nature" and as "a key instrument for a comprehensive approach to security".¹⁸⁹ Considering the user community in the fields of border monitoring, antifraud, transport, air control, civil protection, justice, and defence represented in the panel, it identified collective needs and provided a preliminary assessment of European security needs from space. It also mentioned the Galileo Public Regulated Service (PRS) as one of the five different services that the European navigation and positioning system will be able to provide. Specifically reserved for public authorities, "it enables secured applications to be developed in the European Union".¹⁹⁰ For the short and medium term, the road map requested the Military Committee and the CIVCOM to update their respective military and civil requirements to contribute to the development of a global European Space Policy. For the longer term, the road map tasked EDA with finding possible space-based solutions for ESDP needs and requirements.

2.2.5 The 'Global' European Space Policy

The European Space Policy (ESP), a joint EU-ESA document, was finally issued on 26 April 2007. Its strategic mission declared that "[t]he development of a truly European Space Policy is a strategic choice for Europe, if it does not want to become irrelevant" and that "[s]pace systems are strategic assets demonstrating independence and the readi-

¹⁸³ ESDP and Space (2004), pp. 7-8.

¹⁸⁴ ESDP and Space (2004), p. 11.

¹⁸⁵ Council Joint Action 2004/551CFSP of 12 July 2004 on the establishment of the European Defence Agency, hereinafter referred to as 'Council Joint Action (2004)'.
¹⁸⁶ Council Joint Action (2004), Article 5, point 3.4.6.

¹⁸⁶ Council Joint Action (2004), Article 5, point 3.4.6.

¹⁸⁷ Council, "Draft initial road map for achieving the steps specified in the European Space Policy: "ESDP and Space", 30 May 2005 (9505/05), hereinafter referred to as 'Draft initial road map (2005)'.

¹⁸⁸ Panel of Experts on Space and Security, Report (SPASEC Report), March 2005. For the quotation, see Draft initial road map (2005), p. 1.

¹⁸⁹ SPASEC Report (2005), p. 5, emphasis added.

¹⁹⁰ SPASEC Report (2005), p. 25.



ness to assume global responsibilities".¹⁹¹ It unveiled the link between *autonomous decision-making* (necessary "to exert global leadership in selected policy areas in accordance with European interests and values") and *space-based information and communication systems*.¹⁹² "Independent access to space capabilities" was therefore considered "a strategic asset for Europe".¹⁹³ The role of the ESP was that of enabling the three major stakeholders (EU, ESA and their respective member states) to increase coordination of their space activities and programmes and better defining their respective roles, so as to facilitate Community investments in space activities, including in the field of security and defence. It mentioned that important steps had already been taken to increase coordination between ESA and the EU through the signing of the Framework Agreement and the launching of the two flagship programmes Galileo and GMES.¹⁹⁴

The ESP responded to both the global economic challenges the European space sector was facing and the strategic ambitions set out in the European Security Strategy. It declared that "Europe cannot afford to lose on securing the potential *economic* and *strategic* benefits of space for its citizens".¹⁹⁵ Among its strategic goals, the ESP should, in fact, seek "to meet Europe's security and defence needs as regards space" and "to ensure a strong and competitive space industry", establishing a European Space Programme and coordinating national and EU space activities, and "increasing synergies between defence and civil space programmes and technology, having regard to institutional competencies".¹⁹⁶ The chapter dealing with security and defence synthesised the main concepts expressed by the Council's space policy. In particular, it stated that "[t]he EU approach to crisis management emphasises the synergy between civilian and military actors"; that "[s]pace systems needs for planning and conducting civilian and military Crisis Management Operations overlap; and that "[m]any civilian programmes have a multiple-use capacity and planned systems such as GALILEO and GMES may have military users".¹⁹⁷ Following this premise, the ESP stressed the necessity for interoperability

between civilian and military users, for pooling and sharing the resources of European civilian and military space programmes, "drawing on multiple use technology and common standards", and for improving coordination in the development of civil and military space programmes.¹⁹⁸ In the accompanying working documents of the ESP, Europe's security needs were considered to be fulfilled by almost all the space policy objectives and, in particular, in the fields of satellite navigation, Earth observation, satellite communications, science and technology. Specifically regarding technology, the objective was to "maximiz[e] synergies between civil and defence space and non-space technology developments".¹⁹⁹ Space technology was defined as dual-use.²⁰⁰ Among the key actions, the ESP tasked the Council with the identification of ESDP requirements relevant to GMES security services while ESA was to propose a programme for the development of common security technologies and infrastructures.

2.2.6 A New Urgent Need: Space Situational Awareness (SSA)

Perhaps, the only major difference between "ESDP and Space" and the European Space Policy consists in the stronger tone used to address the issue of vulnerability caused by a growing reliance on space technology. Considering the increasing dependence on space assets for both the economy and security of Europe and its citizens, the ESP indeed affirmed that space-based capabilities "*must* be protected against disruption", as "[a]ny shutdown of part of the spatial infrastructure would have major consequences and freeze a significant part of economic activity and impair considerably the organisation of emergency services".²⁰¹ This changing of tone represents a sign of the increasing importance devoted to the topic. The publicly and heavily condemned Chinese ASAT test in January 2007 had provided a perfect example of how simple and fast it could be to neutralize the benefits coming from space technology and put in a dramatically vulnerable position all those who heavily depended on it. Protecting space assets from not only ASAT threats but also from jamming and all other

¹⁹¹ Commission Communication, "European Space Policy", 26 April 2007 (COM(2007) 212 final), p. 4, hereinafter referred to as 'European Space Policy (2007)'.
¹⁹² European Space Policy (2007), p. 4.

¹⁹³ European Space Policy (2007), p. 4.

¹⁹⁴ Council Decision on the signing of the Framework Agreement between the European Community and the European Space Agency, 7 October 2003 (12858/03 RECH 152).

¹⁹⁵ European Space Policy (2007), p. 3.

¹⁹⁶ European Space Policy (2007), p. 5.

¹⁹⁷ European Space Policy (2007), p. 7.

¹⁹⁸ European Space Policy (2007), p. 7.

¹⁹⁹ Commission Communication, "European Space Policy", "European Space Programme – Preliminary elements", accompanying document (SEC(2007) 504), p. 6.

²⁰⁰ Commission Communication, "European Space Policy", "Impact assessment of the European Space Policy", accompanying document (SEC(2007) 505), p. 10, hereinafter referred to as 'ESP Impact assessment (2007)'.
²⁰¹ For the first quotation, see European Space Policy (2007), p. 7, emphasis added. For the second, see ESP Impact assessment (2007), p. 23.

man-made and natural hazards characterizing the space environment was becoming an inevitable collateral burden to space programmes, specifically if they were to be used also for military purposes. Timely and accurate information about the situation in space became a new urgent need. Once again, it also became a matter of independence in accessing reliable information, this time information relating to the situation *in* space (increasingly considered as necessary for independent utilisation of space). This is indeed how the issue is also presented on the ESA website when referring to its new Space Situational Awareness (SSA) Preparatory Programme (see next chapter).

Regarding security *in* space, it is important to mention that discussions on this matter were taking place also in the European Parliament and, in particular, in the Committee on Foreign Affairs Subcommittee on Security and Defence (SEDE). Following the study on "Europe's Space Policies and their relevance to ESDP", which had been requested by the Parliament and released the previous year, a public hearing on the topic was held in May 2007.²⁰² On that occasion, the author of the study, Rebecca E. Johnson, acknowledged that space security is an issue of global security and international relations and recommended the EU to formulate a common position and a coherent strategy on the matter. She explained that "the concept of security enshrined into the Common Foreign and Security Policy (CFSP) is more nuanced and complex than the 20th century military-oriented defence policies pursued by the superpowers", and that the final aim of an EU strategy should be to prohibit the weaponisation of space.²⁰³ She also recommended actively protecting European space assets and access to space through both technological initiatives ("passive defences such as hardening and shielding, and enhancing Europe's space situation awareness capabilities") and political initiatives ("the development and coordination of policies and strategies to enable Europe to play a more significant and effective role in strengthening the international legal regime and developing 'rules of the road' for space activities and uses").²⁰⁴ As mentioned above, ESA took charge of the development of SSA capabilities while the EU

launched the Code of Conduct for outer space activities initiative.

2.2.7 The Space Council's Endorsement of the ESP

The Space Council Resolution, which endorsed the ESP, highlighted that "the space sector is a strategic asset contributing to the *independence, security and prosperity* of Europe and its role in the world" and underlined its relevance for the CFSP.²⁰⁵ In particular, in stressing the importance of space in supporting global issues such as Climate Change and humanitarian aid, it established a stronger link between space and security issues, indeed suggesting to "improve coordination between *defence* and *civilian* space programmes, pursuing in particular the synergies in the domain of *security*".²⁰⁶ Regarding the need for increased coordination among the EU, ESA and Member States in developing security and defence space programmes (which was one of the main goal of the ESP), the Resolution called for the establishment of a structured dialogue among Member States, the EU and EDA "for optimising synergies between all aspects of the European Space Policy" relating to security and defence.²⁰⁷ The participation of ESA, at that stage, was not mentioned but ESA would indeed be part of what would be later called the 'Structured Dialogue on space and security', following the signing of the Lisbon Treaty (see paragraph 3.1.4). Regarding the military uses of Galileo and GMES, the Space Council affirmed that they "must be consistent with the principle that GALILEO and GMES are civil systems under civil control" and that any change to this principle would require examination of both the EU Treaty and the ESA Convention.²⁰⁸

The Resolution made no mention of security in space and of the need to develop a European SSA capability.

2.2.8 "Research for a Secure Europe"²⁰⁹

The events that characterised the year 2003 undoubtedly affected also the important de-

²⁰² Johnson (2006).

²⁰³ Johnson, Rebecca E., "Weaponisation of Space and Threats to European Space Assets Supporting ESDP", presentation to the Committee on Foreign Affairs Subcommittee on Security and Defence Public Hearing on the Contribution of Space to ESDP, 2 May 2007, ASP, European Parliament, p. 2, hereinafter referred to as 'Johnson (2007)'.

²⁰⁴ Johnson (2007), p. 7.

²⁰⁵ Space Council Resolution on the European Space Policy, in Council document 10037/07, 25 May 2007, pp. 3-4, hereinafter referred to as 'Space Council Resolution on ESP (2007)'.

²⁰⁶ Space Council Resolution on ESP (2007), p. 3 and p. 6, emphasis added.

²⁰⁷ Space Council Resolution on ESP (2007), p. 6.

²⁰⁸ Space Council Resolution on ESP (2007), p. 6.

²⁰⁹ Title of the report of the Group of Personalities (GOP), "Research for a Secure Europe. Report of the Group of Personalities in the field of Security Research", European Communities, 2004, hereinafter referred to as 'GOP Report (2004)'.



velopments that were going to take place in the field of research and development. It may be argued that the prospect of the entry into force of the Constitutional Treaty, allowed also the possibility of establishing a research programme in the field of security at EU level. The Constitutional Treaty would have added a shared competence on space to that on research and technological development, and a shared competence in the area of Freedom, *Security* and Justice.

Following a Communication of March 2003, which highlighted the need for a competitive industrial base and for leading-edge technologies to support the ESDP, the Commission took two concrete actions: it set up a Group of Personalities in the field of security research (GOP) and launched a Preparatory Action in the field of Security Research (PASR) for the period 2004-2006, with a view to preparing the establishment of a European Security Research Programme by 2007 within the Seventh Framework Programme (FP7).

The Group of Personalities was tasked with the mission of proposing principles and priorities of the future European Security Research Programme. In the introduction to their final report, they specified that their mission was "in line with the EU's foreign, security and defence policy objectives and its ambition to construct an area of freedom, security and Justice".²¹⁰ With an explicit reference to the Constitutional Treaty, which would have established an 'Area of Freedom, Security and Justice', thus explicitly finding a common ground, '*security*', between that and the Common Foreign and *Security* Policy, the GOP Report presented the future security research programme at EU level as serving both the internal and external security goals of the Union. It presented technology as indispensable in order to reach the comprehensive security objectives set out by the ESS. The 'personalities' affirmed that "[t]echnology itself cannot guarantee security, but security without the support of technology is impossible".²¹¹ They recalled that the new trends in technology development were creating new synergies among different research sectors and offering new opportunities. They made a clear distinction between *civil*, *security* and *defence* applications and affirmed that they increasingly draw on the same technological base. Space technology was presented as the example *par excellence* of these trends. They were convinced that "a decision as to whether global positioning or Earth observation systems, for example, are to be used for defence and security purposes is primarily

political in character, not technological".²¹² Thus, they recommended that Europe fully exploit its technological strengths by coordinating national and European research activities; systematically analysing security-related capabilities needs, from civil security to defence; fully exploiting synergies between *defence*, *security* and *civil* research; specifying legal conditions and funding instruments for security related research at European level; and setting up institutional arrangements to combine Member States and Community efforts and to involve other interested parties.²¹³ They called for appropriate funding and optimal use of resources.

The Commission endorsed the GOP Report in its communication "Security Research: The Next Steps".²¹⁴ In explaining the reasons why security research was needed, the Commission mirrored what the European Security Strategy had argued in terms of capabilities. It stated that "[i]n Europe, there has for long been a strong separation between research for civil purposes and that for defence objectives", while today, many technologies are 'dual-use' ("civil developments adding to defence capabilities, development originally made for defence purposes leading to major innovations and benefits in the day to day life of the citizen").²¹⁵ Since "terrorism has led to a blurring of lines between internal (police oriented) and external security (military)", the separation had to be finally overcome.²¹⁶ The Commission also announced that a European Security Research Advisory Board (ESRAB) would be established to provide advice on the content and implementation of the European Security Research Programme. Finally, the Commission assured that it would play a role of coordinator of all European research activities, whether funded at Community, national or intergovernmental level, with a view to ensuring coherence of efforts and a high degree of synergies or complementarity. ESA and EDA were both mentioned.

Regarding the Preparatory Action, one of the projects specifically concerned space technologies. Led by EADS Astrium, the aim of the 'ASTRO +' project was to prepare a secu-

²¹⁰ GOP Report (2004), p. 4 .
²¹¹ GOP Report (2004), p. 6.

²¹² GOP Report (2004), p. 12.

²¹³ GOP Report (2004), p. 6, emphasis added.

²¹⁴ Commission Communication, "Security Research: The Next Steps", 7 September 2004 (COM(2004) 590 final), hereinafter referred to as 'Communication on security research (2004)'.

²¹⁵ Communication on security research (2004), p. 4.

²¹⁶ Communication on security research (2004), p. 4.

rity platform to identify the operational service needs of security.²¹⁷

In 2005, the Constitutional Treaty was definitively rejected by the French and Dutch referendums on its ratification and the Parliament and Council Decision establishing the FP7 in 2006 had to stress that “[s]ecurity research at Community level [would] maintain an *exclusively* civil orientation” and would address only ‘civil security’.²¹⁸ However, it also recognised “that there are areas of ‘dual-use’ technology”; that “close coordi-

nation with the activities of the European Defence Agency will be needed in order to ensure complementarity”; and that “European security research will also encourage the development of multi-purpose technologies in order to maximise the scope for their application”.²¹⁹ ‘Security’ and ‘Space’ were both included among the themes of the ‘Cooperation’ area, within the FP7. Community research in the field of space was also meant to support Community policies, including in the field of security.

²¹⁷ Pasco, Xavier, “Space Capabilities for Crisis Management: Reducing Gaps, Improving Action”, *Recherches & Documents* n° 05/2010, p. 20.

²¹⁸ European Parliament and Council Decision No 1982/2006/EC of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013), published in the Official Journal of the European Union, 30 December 2006, emphasis added, hereinafter referred to as ‘Parliament and Council Decision (2006)’.

²¹⁹ Parliament and Council Decision (2006), pp. 26-27.



3. The Lisbon Treaty: Legal Basis for Both Space and the CSDP

3.1 Preparing for the Entry into Force of the Lisbon Treaty

3.1.1 Article 189 TFEU

In addition to the ESP, the year 2007 is also important because, on 13 December, the new Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU) were signed in Lisbon and thus referred to as 'the Lisbon Treaty'. Although the failure in ratifying the Constitutional Treaty had presented once again an example of how expectations may not be fulfilled when considering European integration, the signing of the Lisbon Treaty was nonetheless accompanied by high confidence about its entry into force already by the end of 2008, and this confidence characterized the following months and was expressed in several documents which explicitly referred to it as already legally binding. It started to affect 'space for security' in Europe from the beginning of 2008, and the European Parliament Resolution of 10 July 2008 on Space and security referred to it and to the articles that were going to define the new role of the EU both on space and security matters as they were already in force.²²⁰ Point 4 of the Resolution referred to the most important novelty for the space sector, namely the provision of a legal basis for the European Space Policy and the European space programmes.²²¹ Article 4 of the TFEU indeed confers upon the Union a *sui generis* shared competence to "carry out activities, in particular to define and implement programmes" in the areas of research, technological development and space.²²² Normal shared competences are ruled by the principle of subsidiarity, which implies that when a "proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be

better achieved at Union level", the Union is entitled to act, thereby excluding Member States from doing the same.²²³ This is not the case in the areas of research, technological development and space where Member States cannot be prevented from exercise their competence, even if the EU exercises its competence as well. For this reason, the shared competence in question is also called 'parallel' competence.

Specifically regarding space, Article 189 of TFEU explicitly excludes any harmonisation of the laws and regulations of the Member States, meaning an even more limited scope for the Union's action. A parallel competence, which does not prevent the other from acting, may result in the adoption of duplicating acts or, even worse, in the adoption of acts that are in contradiction to each other. However, given the fact that each initiative of the Union in the areas where it has a shared competence has to be preceded by a green paper and by wide consultations among all the national authorities which could be affected by the initiative, it must be assumed that the risk of duplication is limited.²²⁴ The first paragraph of Article 189 not only provides the European Space Policy with a legal basis but it also explains the reasons why the Union should draw it up: to promote scientific and technical progress (and thus to fill the technological gaps and safeguard the European technological and industrial base); to promote industrial competitiveness (in order to safeguard European industry and allow it to be globally competitive); and finally, to promote the implementation of its policies (and thus to foster the use of space assets at EU level). Article 189 leads to another fundamental implication when considering the ESDP, now called the 'Common Security and Defence Policy' (CSDP). Article 42 of TEU affirms that the CSDP "shall provide the Union with an operational capacity *drawing on civilian and military assets*".²²⁵ Since space has to contribute to the implementation of all EU policy, this means that the EU civilian

²²⁰ European Parliament Resolution of 10 July 2008 on Space and Security (P6_TA(2008)0365), hereinafter referred to as 'Parliament Resolution (2008)'.
²²¹ Parliament Resolution (2008).

²²² Lisbon Treaty, Article 4 of the TFEU, emphasis added.

²²³ The principle of subsidiarity is mentioned in Article 5(3) of the TEU and in Protocol No 2 on the Application of the Principles of Subsidiarity and Proportionality.

²²⁴ The process of consultations (green paper) was introduced by the Amsterdam Treaty. In the Lisbon Treaty, it is mentioned in Article 2, Protocol No 2.

²²⁵ Lisbon Treaty, Article 42 of the TEU, emphasis added.

space programmes *will* be used also for the implementation of security and defence policies, and hence to carry out not only civilian, but also military and mixed crisis management operations, in a dual-use (or *user-driven*) approach. The taboo related to the use of civil assets for military purposes is formally left behind. The Parliament Resolution indeed emphasised “the importance of GMES for foreign as well as security and defence policies of the European Union”.²²⁶ It also underlined the necessity of Galileo for autonomous ESDP operations and for the strategic autonomy of the Union in general. The Resolution is considered to have played an important role in leading to a wider consensus on the use of the Galileo Public Regulated Services (PRS).²²⁷ Indeed, it defined them as vital for navigation, positioning and timing, “not least in order to avoid unnecessary risks”.²²⁸

3.1.2 A Stronger Role for the European Parliament also on Space Matters

With respect to the EU budget, the Parliament Resolution urged the creation of an operational budget line to ensure the sustainability of GMES services in response to user needs. Furthermore, it supported the possibility of other space programmes and institutions being financed by the EU budget, namely the EU Satellite Centre, the implementation phase of the European radio navigation programmes EGNOS and Galileo, the MUSIS military programme (see paragraph 3.2.4), possible future European satellite telecommunications systems supporting ESDP operations, the future European space situational awareness system, and finally called for the setting up of an “operational budget for space assets that serve to support the ESDP and European security interests”, without discriminating between EU space assets and national or multinational space assets.²²⁹ The promotion of a substantial increase in the level of investments for satellite telecommunications, Earth observation and intelligence gathering necessary to address security and defence needs constituted undoubtedly the primary goal of the Resolution, and that the EU budget should be the primary source of financing when it comes to large-scale common projects was its *Leitmo-*

tiv. Indeed, increased financial commitment for both space and defence was expected from the EU institutions as a consequence of the entry into force of the Lisbon Treaty. The fact that the Parliament insisted on the budgetary point reflected another important novelty brought by the Treaty. The Lisbon Treaty confers on it a much stronger power since it now exercises legislative and budgetary functions *jointly* with the Council.²³⁰ The ordinary legislative procedure puts the Parliament and the Council at an equal position. They shall *jointly* adopt regulations, directive and decisions on a proposal from the Commission.²³¹ Although the Declaration concerning the common foreign and security policy, annexed to the Treaty, explicitly excludes any increase of the role of the Parliament in this policy area, this is not the case for the European space policy, which is subject to the ordinary legislative procedure, according to Article 189.²³² And through space, the European Parliament is very likely to become the centre of legitimization of EU policies and legislation, even in the field of security and defence. Indeed, the Lisbon Treaty puts space in a particular position (within the TFEU framework) and provides it with a particular role. Considering that the TFEU regulates the policy areas that are ‘unionised’, including the one concerning the internal security (now called ‘area of Freedom, Security and Justice’ (FSJ), which has replaced the ‘police and judicial cooperation in criminal matters’, which constituted the former third pillar) and that the ESP was conceived to be ‘global’, in order to include also CFSP and CSDP aspects, space represents the bridge between these policy areas, which still retain an intergovernmental character, and those which are ‘unionised’, particularly the FSJ (see paragraph 3.2.1).

The Parliament also continued to take a position on the topic of security in space, which had become very sensitive at international level. It affirmed that “freedom from space-based threats and secure sustainable access to, and use of, space must be the guiding principle of the European Space Policy”.²³³ It expressed its concerns about the possible future weaponisation of space and urged that “under no circumstances should the European space policy contribute to the overall militari-

²²⁶ Parliament Resolution (2008).

²²⁷ Veclani, Anna C., Jean-Pierre Darnis, Valérie V. Miranda, “The Galileo Programme: Management and Financial Lessons Learned for Future Space Systems Paid Out of the EU Budget”, study commissioned by the European Parliament’s Subcommittee on Security and Defence (SEDE), October 2011.

²²⁸ Parliament Resolution (2008).

²²⁹ Parliament Resolution (2008).

²³⁰ Lisbon Treaty, Article 14 and 16 of the TEU.

²³¹ Lisbon Treaty, Article 289 TFEU (for the different types of legislature procedures envisaged by the Treaty) and Article 294 TFEU (for the functioning of the ordinary legislature procedure).

²³² Intergovernmental Conference (which adopted the Treaty of Lisbon), “Declaration concerning the common foreign and security policy”, Annex to the Final Act.

²³³ Parliament Resolution (2008).



sation and weaponisation of space”.²³⁴ It supported the Council’s initiative for a comprehensive EU Code of Conduct and demanded its transformation into a legally binding instrument.²³⁵

3.13 The Year 2008: Space, a Main Character of EU Politics

In addition to the European Parliament Resolution on space and security, the year 2008 witnessed also the release of the European Space Policy Progress Report, in September. The Code of Conduct initiative was listed among the emerging issues and, although not explicitly, it was linked to what had become a crucial need, that of monitoring the space environment to detect potential or actual threats and risks to space activities and systems, known as Space Situational Awareness (SSA).²³⁶ The progress report stressed that Europe did not have an independent capacity to monitor the population of space objects and that it was highly dependent on US data.²³⁷ The Commission reported that a programme proposal to create an independent European SSA capacity was being prepared by the European Space Agency. The user group consulted to provide guidance on the needs and requirements for such a capacity comprised representatives from both civil and military communities. That the SSA capacity is a dual-use capacity is illustrated by the fact that also the European Defence Agency had set up a project team tasked to define ESDP-related SSA requirements.²³⁸ As already mentioned, the ESA SSA Preparatory Programme was finally authorised by the ESA Ministerial Council in November and formally launched on 1 January 2009.

Regarding GMES, the Commission reported that it was working together with the Council Secretary General on the identification of relevant user requirements for the GMES security services and that a number of test and pilot projects, one of them being LIMES (Land and See Integrated Monitoring for Environment and Security), had already been implemented or launched under the Community Research Programmes and the ESA GSE (GMES Services Element), with the involvement of the Satellite Centre. It also reported that a structured dialogue had been set up by the services of the Commission and the EU Council General Secretariat, with the in-

volvement of EDA and the Satellite Centre, in order to improve coordination among civil, security and defence related space activities and aiming at exchanging information and optimising the synergies for the ESDP and other EU policies. Improved coordination and synergies between defence and civilian space programmes and technologies was indeed reported to be considered by EU and ESA Member States as a priority, second only to the further implementation of the Galileo and GMES programmes, the development of a Strategy on International Relations in Space, and the need to develop adequate instruments and funding schemes for Community actions in the space domain.²³⁹

The Council Resolution “Taking forward the European Space Policy”, which was released a few days later, was even more specific on the synergies issue, since it suggested setting up mechanisms and long-term arrangements to improve those synergies, “while respecting the specific requirements of both sectors, including their decision competences and finance schemes”.²⁴⁰ It welcomed the setting up of the structured dialogue and included the European Space Agency among the institutions involved. Regarding the development of a European SSA capacity, the Council affirmed that, “taking into account the international and political nature of this capability, the European Union will take, liaising with ESA and their respective Member States, an active role to set up progressively this capability and an appropriate governance structure”.²⁴¹ After Galileo and GMES, the development of a European SSA capacity was becoming a suitable candidate for a future EU space programme. Three years later, Space Situational Awareness was indeed chosen, together with space exploration, to be the subject of a public consultation concerning a possible EU space programme. The consultation took place at the beginning of 2011 as part of an impact assessment on a possible Commission proposal for an EU space programme concentrating on the two fields.²⁴² And a Commission proposal for and Space Surveillance and Tracking (SST) Support Programme was indeed issued in February 2013 and is currently under Parliament and Council scrutiny, while research projects on

²³⁴ Parliament Resolution (2008).

²³⁵ Parliament Resolution (2008).

²³⁶ Commission, “European Space Policy Progress Report”, Working Document, 11 September 2008 (COM(2008) 561 final), p. 12, hereinafter referred to as ‘ESP Progress Report (2008)’.

²³⁷ ESP Progress Report (2008), p. 12.

²³⁸ ESP Progress Report (2008), p. 12.

²³⁹ ESP Progress Report (2008), p. 3.

²⁴⁰ Council Resolution, “Taking forward the European Space Policy”, in Council document 13569/08, 29 September 2008, p. 5, hereinafter referred to as ‘Council Resolution on ESP (2008)’.

²⁴¹ Council Resolution on ESP (2008), p. 13.

²⁴² Information on the results of the consultations is available on the European Commission website, at: http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=5307.

the topic have been launched under the FP7-Space.²⁴³

At the 2008 Brussels European Council, EU countries adopted the Report on the implementation of the European Security Strategy (11 December) which, unlike the ESS of 2003, explicitly included space assets among the key capabilities whose development needed not only more effort, but also the support of a competitive and robust defence industry across Europe, greater investments in the field of research and development, and the continuation of the successful work done by the European Defence Agency in these undertakings.²⁴⁴ Undoubtedly, this represented a further confirmation that the convergence of interests between European governments and the promoters of 'space for security' was taking place also at EU level.

The year 2008 ended with Council approval of the European Union draft for a Code of Conduct for outer space activities. In its conclusions, the Council affirmed that "strengthening the security of activities in outer space is an important goal in the context of the expanding space activities that contribute to the development and security of States" and that that objective was part of the European space policy.²⁴⁵ Things had clearly changed concerning space in Europe. From being considered indispensable tools for security and defence at national level (1999) and, more slowly, also at EU level (2003), in a few years (2007) space assets had become so important that they themselves needed to be protected. That the answer to this new urgent need was going to become a task for the EU was not in doubt, given the scale and scope of the issue and the expected entry into force of the Lisbon Treaty.

3.1.4 The Structured Dialogue on Space and Security and the European Framework Cooperation for Security and Defence Research

As already mentioned, a 'structured dialogue' on space and security had been established in 2008 "with the aim of achieving a substantial increase in the coordination of space, security and defence related activities", and involving the European Commission, the General Secretariat of the Council including the Satellite Centre, the European Defence

Agency, the Member States and ESA.²⁴⁶ In the same year, the Commission, ESA and EDA created a Joint Task Force on Critical Space Technologies for European Strategic Non-Dependence. After convening a workshop on the issue and consulting with industry, a list was agreed on in March the following year and it was decided that it should be updated every two years. In 2009, another initiative again involving the European Commission, EDA and ESA was launched in the field of research. European Ministers of Defence, meeting in the EDA's Steering Board, decided to launch the European Framework Cooperation for Security and Defence Research, in order to "systematically insure complementarity and synergies of Defence R&T investment by the Agency [EDA] with research investment for civilian security and space by the European Commission under the Seventh Framework Programme and by the European Space Agency", and thus improve what till then was only *ad hoc* cooperation on certain specific projects (e.g. Joint Investment Programmes between EDA and the Commission).²⁴⁷ EDA had been tasked to discuss, together with the Member States, the Commission and ESA, the details of the coordination scheme and to make proposals on possible subjects. Legal bases for this framework cooperation were found in the Council Joint Action establishing the EDA (2004) and in the Parliament and Council Decision on FP7 (2006). Among the functions and tasks enumerated by the Council Joint Action, EDA had to cooperate with the Commission "to maximise complementarity and synergies between defence and civil or security research programmes", while the Parliament and Council Decision, when referring to the research area 'Security' under FP7, had stated that "[r]ecognising that there are areas of 'dual use' technology, close coordination with the activities of the European Defence Agency will be needed in order to ensure complementarity".²⁴⁸ No joint funding or changes in management responsibilities were envisaged. "The aim [was] to synchronise research and allow for mutual use of results, as technologies are increasingly of a dual-use nature for military and civilian end users".²⁴⁹ Activities were expected to begin the following year. Considering that the research area 'Security', under FP7, was also intended to encourage the development of multi-purpose

²⁴³ Commission proposal for a Decision of the European Parliament and of the Council Establishing a space surveillance and tracking support programme, 28 February 2013 (COM(2013) 107 final).

²⁴⁴ ESS implementation report (2008), p. 10.

²⁴⁵ Council, "Council conclusions and draft Code of Conduct for outer space activities", 17 December 2008 (17175/08), p. 2.

²⁴⁶ Council Resolution on ESP (2008), p. 13.

²⁴⁷ EDA, European Framework Cooperation for Security and Defence Research, Factsheet, 2010.

²⁴⁸ See Council Joint Action (2004) and Parliament and Council Decision (2006), Article 5.

²⁴⁹ Bréant, Christian, Ulrich Karock, "Boosting Together the European Research Framework Cooperation", *EDA Bulletin*, Issue 12, June 2009, p. 10, hereinafter referred to as 'Bréant & Karock (2009)'.



technologies, the new framework cooperation was going to allow just this kind of multi-purpose programmes. 'Situational Awareness' was identified by the EDA Steering Board as a possible candidate for such cooperation because of its multi-purpose characteristics, since the technical challenges were said to be as relevant in the civilian security domain as in the defence one, and the technological and industrial base was considered to be very much the same.²⁵⁰ However, if there were a Council Joint Action and a Parliament and Council Decision to provide the legal basis for cooperation between the Commission and the EDA, on one side, and there was a Framework Agreement which provided the legal basis for cooperation between the Commission and the ESA, on the other, there was no explicit legal basis for a direct cooperation between ESA and EDA. However, that was just a matter of time since the situation would change in two weeks with the entry into force of the Lisbon Treaty.

3.1.5 Improving Synergies between Civil and Military Crisis Management

As demonstrated by the documents analysed in the previous paragraph, much more attention was being put on the need to improve coordination and synergies between defence and civilian space programmes. Although the issue had been relevant since the Council's space policy "ESDP and Space", the signing and expected entry into force of the Treaty of Lisbon was providing new impulses for further developments, and this was even truer for the entire ESDP. The new EU Treaty was going to provide a legal basis not only for the latter but also for its comprehensive civil-military approach to crisis management and, more generally, for the European Security Strategy and its broader and more complex concept of security. Article 42 was going to present the CSDP as providing the EU with an operational capacity "*drawing on civilian and military assets*".²⁵¹ Civilian and military assets were going to be used for tasks that were both civilian and military in nature. Article 43(1) says that "[t]he tasks referred to in Article 42(1), *in the course of which the Union may use civilian and military means*, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation" and,

finally, support to third countries in combating terrorism in their territories.²⁵²

In order to fully exploit the new potential offered by the Lisbon Treaty, the Declaration on the Enhancement of the European Security and Defence Policy (ESDP), adopted at the Brussels European Council at the end of 2008, encouraged the establishment of a "new, single civilian-military strategic planning structure for ESDP operations and missions".²⁵³ One year later, a Presidency Report referred to a 'Crisis Management and Planning Directorate' (CMPD) as a body already in place.²⁵⁴ A paper on 'Promoting Synergies between the EU Civil and Military Capability Development', prepared by the Political and Security Committee (PSC), presented the new structure as an instrument which, together with other structures in place or under creation, and with the potential developments based on the Lisbon Treaty, were expected to foster "[c]oherence and convergence between capability development and ESDP operation and missions planning and conduct" and "facilitate progress in areas such as strategic planning, missions and operations reviews and reporting, lessons identified, Information Exchange Requirements, Network Enabled Capabilities and conceptual work, including concept development, at strategic and operational levels, such as the operating implications of the comprehensive approach".²⁵⁵ The Ministerial Declaration 'ESDP 10 years' envisaged a key role for the CMPD "in developing more coherent civilian and military strategic planning for ESDP missions and operations" and in "foster[ing] and coordinat[ing] work on synergies between civil and military EU capability development".²⁵⁶ Even more specifically, in its conclusions on ESDP of 17 November, the Council affirmed that the CMPD was expected to help also in identifying dual needs.²⁵⁷ The Council also

²⁵⁰ Bréant & Karock (2009), p. 10.

²⁵¹ Lisbon Treaty, Article 42(1) TEU, emphasis added.

²⁵² Lisbon Treaty, Article 43(1) TEU, emphasis added. The absence of any clear demarcation between civilian and military tasks in the wording of the article implies an extreme flexibility with regard to the choice between civilian and military means.

²⁵³ European Council, "Declaration by the European Council on the Enhancement of the European Security and Defence Policy (ESDP)", Annex 2, "Presidency Conclusions", Brussels, 11-12 December 2008.

²⁵⁴ Council, "Presidency Report to the European Council on the European External Action Service", 23 October 2009 (14930/09), p. 3.

²⁵⁵ Council, Political and Security Committee, "Promoting Synergies between the EU Civil and Military Capability Development", 9 November 2009 (15475/09), p. 5, hereinafter referred to as 'Promoting Synergies (2009)'.

²⁵⁶ Ministerial Declaration: ESDP 10 years - Challenges and opportunities, 11 November 2009 (15649/09).

²⁵⁷ Council, "Council conclusions on ESDP", 2974th External Relations Council meeting, Brussels, 17 November 2009, p. 4, hereinafter referred to as 'Council conclusions on ESDP (2009)'.

acknowledged “the possible economic benefits of finding Civil Military synergies in Capabilities Development, and the added value of dual use capabilities”, and “underlined that the Political and Security Committee should play a leading role in this work by giving guidance on this matter”.²⁵⁸

3.1.6 The Completion of the Civilian Chain of Command of the EU Crisis Management

The Crisis Management and Planning Directorate represents the last, important step in the evolution process of the EU comprehensive approach to crisis management. It was created by merging the Directorates-General for External Relations (DGE) VIII (responsible for defence matters) and IX (responsible for civilian crisis management) to unify civilian and military planning at the strategic level.²⁵⁹ As mentioned in the first chapter, although envisaged as complementing each other in a holistic approach, civilian and military crisis management structure development began by following two distinct paths and the result could not but become asymmetrical, with the civilian side lagging behind for lack of experience and consensus among the actors involved. As already highlighted, the very reason for the launch of the ESDP indeed concerned the need to fill the gap in military capabilities. The discord on the Iraq War and the consequent need to repair the relations among the EU countries, however, led to new developments. A Civil-Military Cell was created inside the EU Military Staff and a new concept for civil-military coordination was adopted. Still, no civilian counterpart for the EUMS was created and the Committee for Civilian Aspects for Crisis Management (CIVCOM) still lacked its own operational structure. Furthermore, civilian and military chains of command remained distinct.²⁶⁰ The Civil-Military Coordination (CMCO) concept has indeed been criticised for having privileged the development of “a culture of coordination at the expenses of detailed structures and procedures”.²⁶¹ The Civil-Military Cell, although created to “lead to greater coherence of the civilian and military structures under the SG/HR” and to “enhance the EU’s capacity for the strategic planning [...], particularly when a joint civilian/military response [was] needed”, suffered from the political context that surrounded its establishment.²⁶² It was a compromise between a

single permanent Operational Headquarter (OHQ), wanted mainly by the French, and the alternative, preferred mainly by the British under the ‘no duplication’ argument, of using NATO structures under the Berlin Plus arrangements.²⁶³ Thus, it represented a mainly military-oriented innovation. However, neither the NATO structures nor the national OHQs, which had been put at EU disposal, had civil-military competences and the creation of the Civil-Military Cell could provide the EU with a first prototype of an integrated operational structure. The launch of the first missions and operations in 2003 put in motion a learning-by-doing process which was indispensable not only for civilian missions but also, and most of all, for the implementation of the comprehensive approach. As it turned out, much of the burden for the planning and conduct of civilian missions fell upon DGE IX, which had to run several concurrent missions; develop lessons learned and best practices; and manage and guide the civilian capability development process.²⁶⁴ An important step forward was made in 2007 when the civilian side finally created a counterpart for the Military Staff. The Civilian Planning and Conduct Capability (CPCC), composed mainly by staff drawn by the DGE IX, completed the civilian chain of command.²⁶⁵ In practice, it became a permanent civilian OHQ with Command and Control (C2) capacity, under the political control and strategic direction of the PSC and the overall authority of the High Representative of the Union for Foreign Affairs and Security Policy (see next paragraph).²⁶⁶ However, given the increasing need for operations which combined military and civilian aspects, a link between the two chains of command, which would allow the planning and conduct of mixed civilian-military missions and the actual implementation of the comprehensive approach, was still missing.

3.1.7 The Crisis Management and Planning Directorate: The Bridge between Civilian and Military Chains of Command

The Crisis Management and Planning Directorate represents a “decisive move towards

November 2004 (13990/04 EXT 1 (28/01/05)). For the second quotation, see MacShane, Denis (Minister for Europe, Foreign and Commonwealth Office to the Chairman of the Committee on European Union), “European Union Military Staff”, letter to the UK Parliament, European Union Forty-Fifth Report, House of Lords, 25 April 2005.

²⁶³ Gebhard (2009), p. 12.

²⁶⁴ Gebhard (2009), p. 12.

²⁶⁵ Gebhard (2009), p. 13.

²⁶⁶ Information about the CPCC is available on the European External Action Service website, at <http://www.consilium.europa.eu/eeas/security-defence/csdp-structures-and-instruments/cpcc?lang=en>.

²⁵⁸ Council conclusions on ESDP (2009), p. 4.

²⁵⁹ Gebhard (2009), p. 8.

²⁶⁰ Hynek (2010), p. 3.

²⁶¹ Hynek (2010), p. 3.

²⁶² For the first quotation, see Council, “European Defence: Civil-Military Cell”, Annex I to “European Defence: NATO/EU Consultation, Planning and Operations”, 10



civil-military integration".²⁶⁷ It is expected to fill the structural gap, "deal with the full 'conflict cycle', from prevention to crisis management, rebuilding and development"²⁶⁸, and should represent the heart of the EU comprehensive approach to crisis management. Placed within the new European External Action Service (EEAS) (see next paragraph), together with the EUMS and the CPCC, and under the political control and strategic direction of the PSC (which receives advice from the CIVCOM, the EUMC and the Politico-Military Group) and the overall authority of the High Representative (who, according to Article 43(2) of the new Treaty on the European Union (TEU), has the role of ensuring coordination of civilian and military aspects of the EU crisis management), the CMPD is currently conducting missions and Strategic Reviews.²⁶⁹ It has developed an action plan for strengthening ties between the Freedom, Security and Justice (FSJ) policy (internal security) and the Common Security and Defence Policy (external security), and another action plan for civilian-military synergies.²⁷⁰ Given the comprehensive approach, and given the fact that civilian capabilities in terms of personnel are drawn mainly from the area of internal security (e.g. police forces), ties between the FSJ and the CSDP are indispensable, and also on this the Lisbon Treaty paves the way through the formal abolition of the pillar structure (see next paragraph).²⁷¹ This also goes in the direction envisaged by the ESS and by the enlarged concept of security promoted by it, which may be considered the result also of the *sui generis* nature of the European Union, where national boundaries are neither completely 'external' nor completely 'internal'.

The second action plan concerned the issue of promoting synergies, which was getting an

increasing attention during 2009 through a series of papers, meetings and seminars. After the discussions that followed, the PSC stated, in October, that "[c]ivil-military synergies is one of the strengths of the European Union" and "[i]t should be actively pursued, with a view to maximizing coherence and thereby effectiveness in the field as well as at Brussels level".²⁷² "Such synergies [...] should ensure an efficient use of resources in a constrained economic environment".²⁷³ Given its "responsibility for the political direction of the development of capabilities", the PSC was indeed expected to play a leading role on the matter.²⁷⁴

The non-exhaustive list of areas which the CMPD action plan had identified as those where synergies should be strengthened, in the framework of the structured dialogue and taking into account the role of the EU Satellite Centre in the domain, included also the use of space capabilities, such as satellite imagery, environmental data, GMES, space situational awareness and satellite communications.²⁷⁵

It appears evident that the CMPD has been given a central role in EU crisis management capability development. In particular, its work on civil-military synergies places it also at the centre of the structured dialogue on space and security, between ESA and EDA. Considering that the launch of the structured dialogue, of the European Framework Cooperation for Security and Defence Research and the establishment of the CMPD all happened between 2008 and 2009, they are undoubtedly the result of the new potential offered by the Lisbon Treaty.

To conclude on the CMPD, it is worth mentioning that some authors link the establishment of this new structure also to new developments towards a closer relationship and a more effective complementarity between the EU and NATO, also boosted by the approaching signing of the Lisbon Treaty.²⁷⁶ The return of France into NATO's integrated military structures, after a forty-three-year absence, is part of the new developments, as well as progress towards a solution to the issue of the differences in the European membership of the two organisations. Regarding this last point, for example, the Council Joint Action of 2009 on the EU Satellite Centre, amending that of 2001 establishing the Centre, reported the decision taken by the PSC regarding the possibility for "non-EU NATO members and

²⁶⁷ Hynek (2010), p. 4.

²⁶⁸ Deletroz, Alain, "The spoils of EU reform", Reuters blog, 19 February 2010. The author, after criticizing the way the CMPD is being developed, says that "[t]he EU needs an institution that can deal with the full "conflict cycle", from prevention to crisis management, rebuilding and development".

²⁶⁹ The Politico-military Group was previously part of the WEU structures.

²⁷⁰ Information about the CMPD is available on the European External Action Service website, at <http://www.consilium.europa.eu/eeas/security-defence/csdp-structures-and-instruments/cmpd>.

²⁷¹ The former pillar structure was introduced by the Maastricht Treaty and encompassed the European Communities (first pillar) which were the European Community (EC), the European Coal and Steel Community (till 2002) and the European Atomic Energy Community (EURATOM); the Common Foreign and Security Policy (second pillar); and the Police and Judicial Cooperation in Criminal Matters (third pillar). The Maastricht Treaty provided a unified legal personality only to the European Communities while the other two pillars had an intergovernmental nature.

²⁷² Promoting Synergies (2009), p. 2.

²⁷³ Promoting Synergies (2009), p. 2.

²⁷⁴ Promoting Synergies (2009), p. 3.

²⁷⁵ Promoting Synergies (2009), p. 5.

²⁷⁶ Pflüger (2008).

other States which are candidates for accession to the EU" to be involved in the activities of the Centre and to have access to its products by decision of the PSC and on a case-by-case basis.²⁷⁷ On the other hand, another trend, which concerns the increasingly closer relation between the EU and the United Nations, also seems to have influenced the decision to merge DG VIII and DG IX into the CMPD. After the Joint Declaration on UN-EU Cooperation in Crisis Management of 2003, a Joint Statement on the same issue was released in June 2007 and the process towards its implementation is progressing fast.²⁷⁸ The EU crisis management and its comprehensive approach are indeed maturing and growing in confidence under the new framework provided by the Lisbon Treaty.

3.2 The Post-Lisbon Treaty Era

3.2.1 The Lisbon Treaty and the Link between the Area of Freedom Security and Justice (FSJ) and the Common Security and Defence Policy

The Lisbon Treaty entered into force only on 1 December 2009, after two Irish referendums on its ratification, the first of which had rejected it. According to some authors, the political momentum and the "spirit of voluntarism" which had characterised the entire 2008 were already lost.²⁷⁹ However, the importance of the final ratification of the Lisbon Treaty cannot be underestimated.

The new consolidated version of the Treaty on European Union (TEU) and the new Treaty on the Functioning of the European Union (TFEU), which resulted from it, are commonly considered a slightly different version of the never ratified Constitutional Treaty of 2004 and, indeed, considering the Common Foreign and Security Policy in general, and the Common Security and Defence Policy, in particular, the Constitutional Treaty would have brought almost all the novelties that the Lisbon Treaty has. The Treaty of Nice had represented a step back from the achievements of the Amsterdam Treaty. It had repealed any reference to the Western European Union and prohibited enhanced cooperation on mat-

ters having military or defence implications. The Lisbon Treaty allows not only enhanced cooperation on those matters but also Permanent Structured Cooperation (PESCO).²⁸⁰ It provides the entire EU with a legal personality, thus the distinction between the former first pillar (which included the European Community, the European Coal and Steel Community and the European Atomic Energy Community, all provided with legal personality) and the other former two pillars (Common Foreign and Security Policy and Police and Judicial Cooperation on Criminal Matters, both without legal personality and with an intergovernmental nature) has now been repealed. The European Union succeeds the European Community.²⁸¹ The CFSP maintains, however, its intergovernmental nature. Article 24 of TEU states that the CFSP "is subject to specific rules and procedures" and its governing provisions are included in the TEU.²⁸² Article 24 and Article 31 affirm that both the European Council and the Council, when adopting decisions in this area, shall act unanimously and that the adoption of legislative acts is excluded. The Council may act by qualified majority only when adopting a decision following a specific request from the European Council or when adopting a decision on the basis of a decision taken by the European Council. However, these exceptions should not concern issues having military or defence implications. On the contrary, the former third pillar, now named 'area of Freedom, Security and Justice' (FSJ), is 'unionised' and subject to normal rules and procedures.

In line with the European Security Strategy, which considers internal and external security as indissolubly linked and provides a new comprehensive (now 'global') approach to security, in general, and to crisis management, in particular, the Lisbon Treaty strengthens the links between the CFSP and the FSJ. Article 43 of TEU specifies that the tasks which the Union should be able to conduct under the framework of the Common Security and Defence Policy "may contribute to the fight against *terrorism*, including by supporting third countries in combating terrorism in their territories".²⁸³ Article 75 of

²⁷⁷ Council Joint Action 2009/834/CFSP of 10 November 2009 amending Joint Action 2001/555/CFSP on the establishment of a European Union Satellite Centre.

²⁷⁸ Hynek (2010), p. 2.

²⁷⁹ See, for example, Biscop, Sven, "Permanent Structured Cooperation: Building Effective European Armed Forces", Paper presented at the 12th EUSA Biennial Conference Boston, 3-5 March 2011, p. 3.

²⁸⁰ See Lisbon Treaty, Article 20 TEU for enhanced cooperation, and Article 42(6) TEU for the permanent structured cooperation (PESCO). So far, no PESCO has been formed within the EU framework. Bilateral or multilateral agreement on defence matters have been signed outside that framework, the Franco-British one of 2010 being the first. In September 2012, Belgium, The Netherlands and Luxembourg fixed the BENELUX defence cooperation structure. They have presented it as the basis of a 'permanent structured cooperation between their national defences'.

²⁸¹ Lisbon Treaty, Article 1 TEU.

²⁸² Lisbon Treaty, Article 24 TEU.

²⁸³ Lisbon Treaty, Article 43 TEU.



TFEU specifies that the objectives of the area of Freedom, Security and Justice include “preventing and combating *terrorism* and related activities”.²⁸⁴ Furthermore, Article 71 of the TFEU establishes a standing committee within the Council “to ensure that operational cooperation on internal security is promoted and strengthened within the Union”.²⁸⁵ Article 222 on the newly-introduced Solidarity Clause in the event of *terrorist attacks* or *natural or man-made disasters* affecting one Member State, affirms that the abovementioned standing committee, together with the PSC, shall assist the Council in the arrangements for the implementation by the Union of the solidarity clause. The PSC and the standing committee in question shall submit joint opinions, if necessary. Both the European Security Strategy and the EU Internal Security Strategy, issued in 2010, cite terrorism as the first among the main threats.²⁸⁶ And terrorism is not the only main threat which the two strategies have in common, since there are also organised crime, cyber-crimes and, to a certain extent, also climate change, when considering natural disasters, thus highlighting a clear convergence in the identification of threats to security.²⁸⁷

3.2.2 Internal Security Strategy and European Security Strategy: Towards Convergence on the Identification of Threats to Security

Elaborated in response to the recommendation made in the Stockholm Programme 2010-2014 for the area of Freedom, Security and Justice, the EU Internal Security Strategy recognises the interdependence between internal and external security and aims at achieving even greater interdependence.²⁸⁸ Indeed, it states that “internal security increasingly depends to a large extent on external security [thus] [i]t is necessary to build relationships with other countries through a global approach to security, working closely with them and, when necessary, supporting their institutional, economic and social development”.²⁸⁹ It affirms that high security levels should be maintained not only within EU territory but also in third countries and in virtual environments, whenever Euro-

pean citizens are concerned.²⁹⁰ This global approach to security encompasses even more enhanced cooperation with the Common Security and Defence Policy, and between EU agencies and their respective missions, and strengthened participation of Freedom, Security and Justice bodies and law enforcement agencies at all stages of civilian crisis management missions “so that they can play a part in resolving conflicts by working together with all services involved on the ground (military, diplomatic, emergency services, etc.)”.²⁹¹ In this context, the Internal Security Strategy is described as representing an “indispensable complement” to the European Security Strategy.²⁹²

After endorsement by the European Council, the Commission issued an action plan in five steps which goes even further in strengthening the link between the internal and external security areas of the EU. It affirms that the areas in which the EU exercises its role in internal security encompass also crisis management; that the contribution of both internal and external policies is necessary in order to reach EU security objectives; and that “[t]he values and priorities in the Internal Security Strategy, including [the] commitment to promoting human rights, democracy, peace and stability in [the EU] neighbourhood and beyond, are an integral component of the approach laid down in the European Security Strategy”.²⁹³ These extracts express a clear will to create a bridge between the Common Foreign and Security Policy and the area of Freedom, Security and Justice by emphasising the external aspects of EU internal security, in the same way that the ESS had emphasised the internal aspects of EU external security. Terrorism is rightly chosen to represent that bridge, for its wide umbrella covers threats to both internal and external security and combating it requires both civilian and military means, as clearly stated in Article 43 of the TEU. As a consequence, EU crisis management institutions and structures may be expected to play an important role in this convergence and the Lisbon Treaty provides specific guidance in Article 43 TEU when it states that “[t]he High Representative of the Union for Foreign Affairs and Security Policy, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of civilian and military aspects of

²⁸⁴ Lisbon Treaty, Article 75 TFEU.

²⁸⁵ Lisbon Treaty, Article 71 TFEU.

²⁸⁶ Council, “Draft Internal Security Strategy for the European Union: ‘Towards a European Security Model’”, 8 March 2010 (7120/10), draft prepared by the Council and later approved by the European Council, hereinafter referred to as ‘Internal Security Strategy (2010)’.

²⁸⁷ As mentioned in the previous chapter, cyber-crimes and climate change have been included among the main threats to security by the ESS implementation report of 2008.

²⁸⁸ Internal Security Strategy (2010), pp. 2 and 5.

²⁸⁹ Internal Security Strategy (2010), p. 16.

²⁹⁰ Internal Security Strategy (2010), p. 4.

²⁹¹ Internal Security Strategy (2010), p. 17.

²⁹² Internal Security Strategy (2010), p. 17.

²⁹³ Commission Communication, “The EU Internal Security Strategy in Action: Five steps towards a more secure Europe”, 22 November 2010 (COM(2010) 673 final), pp. 2-3, hereinafter referred to as ‘Communication on ISS (2010)’.

[the tasks]" which may contribute also to the fight against terrorism.²⁹⁴

3.2.3 The Role of the High Representative in Linking the FSJ and the CSDP

The High Representative of the Union for Foreign Affairs and Security Policy chairs the Foreign Affairs Council. She/he is one of the vice-presidents of the Commission and the head of the European Defence Agency. She/he conducts the CFSP and the CSDP and contributes through her/his proposals to their development. A new, autonomous body, the European External Action Service (EEAS) has been created to assist her/him in fulfilling her/his mandate. Given the already described increasing emphasis on the need to exploit civil-military synergies which has characterised recent years; given the creation of the CMPD to foster those synergies and that the CMPD is placed under her/his direct authority and responsibility; and, most importantly, given the fact that the current person occupying the position has chosen to place her headquarters within the Commission, all of this should make the High Representative the physical link between what still has an inter-governmental nature (CFSP) and what is now governed by the Union rules and procedures (FSJ). Indeed, an explicit reference to the EEAS, and thus implicitly to the High Representative, is made by the Commission when, following the recommendation of the Internal Security Strategy to pay attention to "weak and failed states", it delineates "internal security with a global perspective", which gives special attention to third countries and regions which may affect both the external and internal security of the Union and provide the European External Action Service with the role of integrator of security experts of the Member States, the Council and the Commission, with a view to including them in EU delegations.²⁹⁵ Indeed, convergence in the identification of threats to security responds not only to the nature of those threats and to the broader approach to security, but also to the lack of capabilities and resources always lamented by the ESDP/CSDP.

3.2.4 And the Role of Space...

As already highlighted, space is also called upon by the Lisbon Treaty to play an important role in the attempt to connect the respective internal and external security legal frameworks. On one side, the EU is allowed to use space technology for all its policies (Article 189 TFEU). On the other side, the

CSDP has to provide the Union with an operational capacity drawing on civilian and military assets (Article 42 TEU). Since the European Space Policy addresses space technologies in a user-driven approach, recognising that they are often common between civilian and defence applications, and stresses the need for synergies between civilian and defence space programmes particularly in the *security* domain, space assets (notwithstanding whether they are civilian or military) are expected to serve the security needs of the Common *Security* and Defence Policy as well as those of the area of Freedom, *Security* and Justice. Article 189 allows for space programmes to be established by an act adopted jointly by the Parliament and the Council under the rules of the ordinary legislative procedure, which in turn allow the Council to act by a *qualified majority* in the Conciliation Committee and in the third reading of the process of adoption of an act under the procedure in question.²⁹⁶ If terrorism, organised crime, cyber-crime and climate change are the threats identified as common to both the internal and external security of the EU; if the High Representative is in charge of coordinating the civilian and military components of the EU response in combating those threats; and if the CMPD is the instrument which allows that coordination, the Lisbon Treaty presents space as the technology that will be used to implement both the FSJ and to the CSDP.

3.2.5 The ESA-EDA Administrative Arrangement

As already mentioned, Article 189 of the Treaty on the Functioning of the European Union creates a link between space and the Common Security and Defence Policy. It gives a legal basis to the 'global' European space policy, as was envisaged by "ESDP and Space" in 2004. The Article also says that "[t]he Union shall establish any appropriate relations with the European Space Agency", thus linking ESA not only to the 'global' European space policy, but also, although indirectly, to the Common Security and Defence Policy. The Lisbon Treaty also provides the European Defence Agency with a legal basis. After a first reference in Article 42(3) of the TEU, it devotes the entire Article 45 to it. The EDA is the only EU agency mentioned in the new Treaties and this single fact already highlights the importance attached to it. The Agency in the field of defence capabilities development, research, acquisition and armaments, which is EDA's full name, is mandated by the TEU to identify operational re-

²⁹⁴ Lisbon Treaty, Article 43(2) TEU.

²⁹⁵ Communication on ISS (2010), p. 3.

²⁹⁶ Lisbon Treaty, Article 293(1) and Article 294(10) and (13) TFEU.



quirements and promote measures to satisfy them; to contribute to and implement the necessary measures to strengthen the industrial and technological base of the defence sector, also by improving the effectiveness of the military expenditures; to participate in defining a European policy for capabilities and armaments; and to assist the Council in evaluating the improvement of military capabilities.²⁹⁷ In particular, it shall contribute to identifying capabilities objectives for the Member States and evaluating the observance of the commitments which they take in this field; promote the harmonisation of operational needs and procurement methods; propose multilateral projects to reach the capabilities objectives, manage specific cooperation projects, and coordinate those implemented by Member States; support defence technology research and plan and coordinate joint research activities.²⁹⁸

Combining the formal recognition made in Articles 42-46 of the TEU of the Common Security and Defence Policy as one of the policies of the Union, and Article 45 on the European Defence Agency with Article 189, which links ESA with EU policies, an indirect link is established also between the two agencies. There is no doubt that the ESA-EDA Administrative Arrangement signed in June 2011 is the result of the new legal environment, at least because it eliminates the taboo of space activities for security and defence at EU level. A clear example of the changing situation is the Space Council Resolution of 2010, which, acknowledging the stronger competence provided by the Lisbon Treaty to the EU on security and defence matters, and the importance attached to EU crisis management by the Union and its Member States as a key element of their action at global level, invites the Commission and the Council, assisted by EDA, and together with Member States *and* ESA, “to explore ways to support current and future capability needs for crisis management [...] taking full advantage of dual-use synergies as appropriate”.²⁹⁹ ESA and EDA are thus called upon to work together.

As stated on the ESA website, the Administrative Arrangement aims, in particular, “at exploring the added value and contribution of space assets to the development of European capabilities in the area of crisis management and the Common Security and Defence Pol-

icy”.³⁰⁰ However, cooperation between the two agencies was already ongoing before that date and continues, under the new legal framework, in domains such as intelligence, surveillance and reconnaissance, satellite communication in support of Unmanned Aerial Systems (UAS), Space Situational Awareness, critical space technologies for European non-dependence and civil-military synergies in Earth observation (see paragraph 3.2.7). Less than one month after the signing of the Administrative Arrangement, a Council Decision, repealing the Joint Action which had established the EDA in 2004 to take into account the amendments introduced by the Lisbon Treaty, affirmed that “[t]he Agency should develop close working relations with [...] the European Space Agency”, a paragraph which was not included in the previous Joint Action.³⁰¹ It also says that the head of ESA may be invited by the EDA Steering Board (the decision-making body of the agency) to participate in its meetings, when dealing with matters of common interest.

3.2.6 “Towards a Space Agency for the European Union”?

All these developments cannot but revive the debate on the role of the ESA in Europe, as demonstrated by the recently issued Commission communication on the establishment of appropriate relations between the EU and ESA.³⁰² The ESP had already mentioned the issue of the divergent membership between the EU and ESA, and highlighted that the different approaches and separate legal processes that characterise the two entities were causing “cumbersome decision-making processes”, as in the case of Galileo.³⁰³ It envisaged the possibility of improving the Framework Agreement. The Space Council Resolution that endorsed the ESP had foreseen for ESA a role as manager of the EU-funded R&D space infrastructures programmes and as coordinator of the relevant European agencies and entities. It had also emphasised “the political and economic dimension of ESA’s

²⁹⁷ Lisbon Treaty, Article 42(3) and Article 45 TEU.

²⁹⁸ Lisbon Treaty, Article 45 TEU.

²⁹⁹ Council Resolution, “Global challenges: Taking full benefit of European space systems”, in Council document 16864/10, 26 November 2010, p. 8.

³⁰⁰ http://www.esa.int/About_Us/Paris_Air_Space_Show/Signing_of_EDA_ESA_Administrative_Arrangement.

³⁰¹ Council Decision 2011/411/CFSP of 12 July 2011 defining the statute, seat and operational rules of the European Defence Agency and repealing Joint Action 2004/551/CFSP, hereinafter referred to as ‘Council Decision on EDA (2011)’.

³⁰² Commission Communication, “Establishing appropriate relations between the EU and the European Space Agency”, 14 November 2012 (COM(2012) 671 final), hereinafter referred to as ‘Communication on EU-ESA relations (2012)’. A first, important document on the matter dates back to June 1999 and consisted of a Commission working document entitled “Towards a coherent European approach for space” (SEC(1999) 789 final).

³⁰³ European Space Policy (2007), p. 11.

'fair return' principle [and] the importance to assess and improve [its] implementation [...] in view of the future challenges for industry to remain competitive in a changing environment worldwide"³⁰⁴ What, in 2007, was only a hesitant mentioning of the issues at stake, has transformed, in the post Lisbon Treaty era, into clear promotion by the Commission of the "rapprochement of ESA towards the European Union".³⁰⁵ The new Commission Communication enumerates several issues that limit the possibilities for better cooperation: "mismatch of financial rules" (ESA geographical return against the EU strict principle of best value); "membership asymmetry" (Switzerland and Norway are members of ESA but not of the EU; Canada has a bilateral cooperation agreement with ESA); "absence of mechanism for policy coordination" (which would allow consistency between ESA initiatives and EU policies in line with the international relations of the EU); and "missing political accountability for ESA" (absence of a formal link between ESA and the European Parliament).³⁰⁶ The membership asymmetry represents one of the major concerns for the Commission since it affects also the stronger competence that the Lisbon Treaty gives the EU on security and defence matters. The Commission indeed states that, "[i]n order to contribute towards the objectives of the Common Security and Defence Policy, the EU has to establish ever closer and stronger links and synergies between the civil and defence dimensions of space" and that "[t]he collaboration of the Member States and ESA is essential in this endeavour".³⁰⁷ According to the Commission, the fact that there are members of the ESA who are not members of the EU poses constraints on EU-ESA relations, specifically when considering security and defence matters. In a 2011 communication, the Commission had wished for ESA to "continue to develop into an organisation with an intergovernmental and an EU dimension in which military and civil programmes can coexist".³⁰⁸ In its last communication, this possibility is presented as intermediate between the options of improved cooperation under the *status quo* and the transformation of ESA into an EU agency.

The current parallel and diverging developments towards the enlargement of ESA to Eastern European countries, on one side, and towards the inclusion of ESA into the EU, on the other, demonstrate how complex the

situation is. ESA has always represented a pole of attraction for those European countries who wished to conduct space activities, and its sometimes contested '*juste retour*' principle, which provides ESA Member States with industrial contracts corresponding to the amount of their financial contribution, has been the main reason for that attraction. The transformation of ESA into an EU agency would imply abiding by EU rules and, in particular, to the principle of 'best value for money', which very often provides many advantages for bigger industries and few for smaller ones.

It is obvious that all will depend on the political will of the Member States of both ESA and the EU. There is no doubt that the way in which the EU will recover from the current financial and economic crisis will have an impact also on the future of EU-ESA relations.

3.2.7 Copernicus and MUSIS

This report started with the WEU Technological and Aerospace Committee proposal for a single integrated space system for Earth observation, which would have been "capable at one and the same time of providing a service for military purposes and information for civil use", and the report concludes with the Global Monitoring for Environment and Security (now renamed 'Copernicus') and the Multi Space-based Imaging System (MUSIS) programmes.³⁰⁹ Copernicus is an EU civilian programme under civilian control which may also serve security and defence users. It is currently in its initial operations phase. Copernicus security services are described by the EU Regulation of 2010 as an important part of the GMES initiative.³¹⁰ They respond to security challenges which the EU faces notably in the fields of border control and maritime surveillance and should support EU external actions. The same regulation assigns to the Commission, assisted by a GMES Committee in its 'Security Board' configuration, the responsibility for the implementation of the security policy. MUSIS is a multilateral military cooperation programme initially promoted by six EU countries (Belgium, France, Germany, Greece, Italy and Spain) to ensure continuity for the current generation systems (HELIOS, SAR-Lupe and COSMO-SkyMed). The MUSIS programme entered ESA as a Category B Programme in 2009. A Category B Programme is defined by the Council Decision on EDA as an *ad hoc* project or pro-

³⁰⁴ Space Council Resolution (2007), pp. 6-7.

³⁰⁵ Communication on EU-ESA relations (2012), p. 4.

³⁰⁶ Communication on EU-ESA relations (2012), pp. 3-4.

³⁰⁷ Communication on EU-ESA relations (2012), p. 3.

³⁰⁸ Commission Communication, "Towards a space strategy for the European Union that benefits its citizens", 4 April 2011 (COM(2011) 152 final), p. 11.

³⁰⁹ WEU Report (1993).

³¹⁰ European Parliament and Council Regulation (EU) No 911/2010 of 22 September 2010 on the European Earth monitoring programme (GMES) and its initial operations (2011-2013).



gramme which one or more EDA participating states may decide to establish within the EDA's remit.³¹¹ Indeed, one of the EDA tasks consists of coordinating existing programmes implemented by Member States and promoting wider participation. Another task consists of preparing programmes to be managed by OCCAR, at the request of Member States, as the Council Decision affirms that EDA should develop close working relations not only with ESA, but also with "existing arrangements, groupings and organisations, such as those established under the Letter of Intent Framework Agreement [...], as well as the [...] OCCAR".³¹²

The MUSIS-Federating Activities seem to be a case in point. In May 2011, France and Italy signed a Programme Decision for the management by OCCAR of the Preliminary Definition Phase ('Phase B') of the MUSIS-Federating Activities Programme, as a result of the difficulties among the MUSIS partners to come to an agreement on a common ground infrastructure, because of the "sensitivity of information to be shared and the technical complexity of the project".³¹³ As stated on the EDA website, "EDA also represents the MUSIS nations' interests in any institutional forum where Defence and Security issues related to Space capabilities are discussed and synergies between civil and military EU Space capabilities are addressed".³¹⁴ Specifically regarding civil-military synergies, a Joint Task Force (JTF) composed of the European Commission, the European Defence Agency, the Council Secretary General and the European Space Agency was set up in 2009 to work on synergies in the field of Earth observation.³¹⁵ Its overall

aims also encompassed the identification of "appropriate synergies between MUSIS and current European space programmes under development such as GMES", to exploit the potential for complementarity, given the GMES wide-area observation capabilities and the MUSIS VHR targeted observation.³¹⁶ Considering the nature of the systems, which will both rely on individual space assets, owned and controlled by different actors, the final report of the Joint Task Force reported that ESA (for GMES) and EDA (for MUSIS) were exploring System of Systems solutions, thus focusing on ground segments.³¹⁷ The report stated that the parallel studies would allow "the identification of potential synergies [...] as well as associated challenges and potential obstacles".³¹⁸ EDA was reported to have already developed a Concept Capability Demonstrator of a station able to import and process a large set of imagery data from many sources and in multiple formats, using the EU Satellite Centre as the test centre for the station.

The Satellite Centre represents in this sense the joining link between commercial and EU civilian space programmes for Earth observation, on one side, and EDA and other security and military users on the other. In its 2011 annual report, the EUSC reported having been active in "developing the security dimension of the [...] GMES programme", participating in four of its related projects: GMOSAIC (GMES services for Management of Operations, Situation Awareness and Intelligence for regional Crisis), SAFER (Services and Applications For Emergency Response), DOLPHIN (Development of Pre-operational Services for Highly Innovative Maritime Surveillance Capabilities), and NEREIDS (New Service Capabilities for Integrated and Advanced Maritime Surveillance), which are all part of the European Commission's Seventh Framework Programme for Research and Technological Development.³¹⁹ It also reported that it had used GMES Rapid Geospatial Reporting services to support the EUFOR Libya Operational Headquarters constituted in Rome in 2011, demonstrating "a trusted gateway to fuse GMES generated data with other sources".³²⁰ However, the flow of information between Copernicus and MUSIS

³¹¹ Council Decision on EDA (2011), Article 20. Another recent example of an EDA Category B Programme related to space is the European Satellite Communications Procurement Cell (ESPC) whose overall aim is "to pool the procurement of commercial SatCom capacity in order to reduce costs, promote ease of access and improve efficiency to deliver a better connectivity to armed forces of the EU Member States". So far, France, Italy, Poland, Romania and the United Kingdom participate to the ESCPC programme.

³¹² Council Decision on EDA (2011). EDA and OCCAR had signed an Administrative Arrangement on July 2012 which should facilitate the integration within OCCAR of the programmes originated within EDA, on the basis of Article 5 of the Council Decision.

³¹³ Darnis, Jean-Pierre and Anna C. Veclani, "Space and Security: The Use of Space in the Context of the CSDP", European Parliament, study requested by the European Parliament's Committee on subcommittee on Security and Defence, November 2011, p. 15.

³¹⁴ EDA website, <http://www.eda.europa.eu/projects/projects-search/multinational-space-based-imaging-system>.

³¹⁵ EU-EDA-CSG-ESA Joint Task Force, "Civil-Military synergies in the field of Earth Observation", Final Report, 26 November 2010, hereinafter referred to as 'JTF Final Report (2010)'. The Joint Task Force was set up according

to the request made by the Council Resolution on ESP (2008).

³¹⁶ JTF Final Report (2010), p. 4.

³¹⁷ For the time being, GMES relies only on contributing national and/or commercial missions while, in the near future, it will be able to also use five so-called 'sentinels', specifically planned for GMES purposes and fully owned by the EU.

³¹⁸ JTF Final Report (2010), p. 13.

³¹⁹ EU Satellite Centre, Annual Report 2011, p. 25, hereinafter referred to as 'EUSC Annual Report (2011)'.

³²⁰ EUSC Annual Report (2011), p. 12.

will likely be only unidirectional, although the final report of the Joint Task Force recommended that, "due to overall scarce resources, military assets should be made available if possible for civil operations under the CSDP", since "[t]his has already been proved effective at national level".³²¹ COSMO-SkyMed and Pléiades have in fact demonstrated how a single space system may be used for both civil and military purposes, when designed from its inception to serve both communities. However, as reaffirmed by the same report, GMES/Copernicus "remains a civil initiative and potential requirements from the defence side can only be taken into consideration as long as these are compatible with the civil use of GMES".³²² MUSIS federated missions, on the other hand, have been designed to serve only military users. The JTF recalled, for the sake of the post-MUSIS generation missions,

that "synergies are maximized when user requirements are defined, discussed and shared at the start of the programme".³²³ Nonetheless, it also suggested that civil and military space assets and their associated ground segments "can be potential contributors to a wider System of Systems, on an ad hoc basis".³²⁴ This represents the most ambitious goal which the involved EU partners may aspire to. It reflects also the general EU approach to security and defence, which only have the characteristics of a compromise between what is desirable and what is effectively attainable. While this may be very far from the proposal of the WEU Technological and Aerospace Committee of one single system for both civil and military users, it is certainly more 'European', and in line with the EU motto "united in diversity".

³²¹ JTF Final Report (2010), p. 25.

³²² JTF Final Report (2010), p. 14.

³²³ JTF Final Report (2010), p. 23.

³²⁴ JTF Final Report (2010), p. 13.



Conclusions

The comprehensive approach to crisis management, on one side, and the technological convergence between civilian and military space activities, on the other, represent two faces of the European response to the lack of resources. The entire process of integration in the fields of security and defence, as it has been developing since 1999, responds to the same necessity. The Balkans wars found Europeans unprepared. They recognised that contributions made by each state on an ad hoc basis and in the wake of emergencies were not the right way to fulfill the ambitious goal signed in Maastricht. Furthermore, they abruptly acknowledged the technological gap between them and their biggest ally, the US. They lacked critical capabilities and, among those, critical space capabilities, which only through pooling enormous resources and efforts would have been possible to develop. Considering the fact that space technology represents a key element of post-Cold War warfare and, most of all, one of the pillars, if not the main pillar, of what we now call 'the information society', it remains highly sensitive and strategic. What Europeans allowed themselves to develop together was only what they were not able to develop on their own but was absolutely necessary if they were to play a credible role on the international scene, both in political and economic terms. And the economic terms were not of second order importance, for the globalisation process, which was booming during the 1990s, was making competition among established space-faring nations for new markets, mainly institutional, very difficult to sustain for a fragmented European industry. Defence-related industries, and space industries, were allowed to restructure and consolidate at transnational level, and two civilian space programmes were launched at EU level. Military space activities remained confined to the national or bilateral level till the entry into force of the Lisbon Treaty. On paper, the Lisbon Treaty undoubtedly represents a step forward in the integration progress, specifically in the fields of security and defence, and this is confirmed by the fact that the MUSIS programme entered EDA as a Category B programme soon after its entry into force.

However, what was still possible in the wake of the entry into force of the Lisbon Treaty,

was demonstrated to be impossible only three years later. What has happened to MUSIS, (now MUSIS-Federating Activities, a bilateral programme between France and Italy), but also the way in which Galileo and GMES came into being, are emblematic of how difficult it is in Europe to proceed along the path of actual integration in the fields of security and defence. Integration progresses only when it is perceived as a necessity, only when it benefits everybody. Given its strategic characteristics, space cannot but represent the litmus test of how far Europeans can go in a given moment. In 1999 and in 2003, further integration was felt necessary. Even in those years, however, space programmes at EU level were only civilian programmes and could deal only with civil security. In 2004, the statement made by the Council that those same programmes had the potential to contribute also to military crisis management represented an incredible step forward. Furthermore, the call for civil-military synergies in the use of space assets mirrored the call for civil-military synergies in the field of crisis management. To a dual approach to security corresponded a dual-use approach to space activities and technology development.

It has been argued that the "Union's external projection as a security provider peaked between 2007 and 2008", and that those two years were characterised by a "widespread optimism about Europe's potential role in the world".³²⁵ It is not by chance that space was one of the protagonists of EU politics in those same years. The European Space Policy was issued in 2007. In July 2008, the Parliament issued its resolution on space and security and, in December, the Council approved a draft Code of Conduct for outer space activities. Undoubtedly, it was the political climate surrounding the signing of the Lisbon Treaty in 2007 that made that possible. However, its entry into force, in 2009, coincided with the arrival in Europe of the financial crisis. Three years later, the crisis has worsened and the political climate has dramatically changed. Nevertheless, in September 2012, the foreign ministers of Austria, Belgium, Denmark, France, Italy, Luxemburg, The Netherlands, Poland, Portugal and Spain, led by the Ger-

³²⁵ Missiroli, Antonio, "Strategic Foresight – and the EU", EUISS Brief Issue 13, 20 February 2013.

man Foreign Minister, Guido Westerwelle (the 'Future of Europe Group'), signed the so-called 'Westerwelle Report' in which, in order to "enhance the coherence and the political clout of the [EU] external action", they called, in the short term, for a revision of the decision on the EEAS; a stronger role for the High Representative, at least in key areas; and a fundamental reinforcement of the Common Security and Defence Policy.³²⁶ In the longer term, they called for more majority decisions in the Common Foreign and Security Policy area and a European Defence Policy, which

may imply a European army, for some members of the Group. Although it was specified that not all participating ministers agreed with all proposals, the initiative demonstrates that (with the noteworthy exception of the UK) the core of the EU countries are rallied around the idea that EU integration in the fields of security and defence needs to go further, not to go backward. And, as has been underlined, when the CFSP and the CSDP progress, then also integration in the field of space activities progresses, regardless of their civilian or military nature.

³²⁶ Future of Europe Group of the Foreign Ministers of Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, The Netherlands, Poland, Portugal and Spain, Report ('Westerwelle Report'), 18 September 2012.



List of Acronyms

| Acronym | Explanation |
|----------------|--|
| ABM | Anti-Ballistic Missiles Systems |
| AMIS | African Union Mission in Sudan |
| ARPA | Advanced Research Projects Agency |
| ASAT | Anti-Satellite |
| ASI | Agenzia Spaziale Italiana (Italian Space Agency) |
| ATHENA-FIDUS | Access on Theatre and European Nations for Allied forces-French Italian Dual-Use Satellite |
| BA | British Aerospace |
| BOC | Besoins Opérationnels Communs |
| C2 | Command and Control |
| CASA | Construcciones Aeronáuticas SA |
| CCMS | Committee on the Challenges of Modern Society |
| CFSP | Common Foreign and Security Policy |
| CIMIC | Civil-Military Cooperation |
| CIVCOM | Committee for civilian aspect of crisis management |
| CMCO | Civil Military Coordination |
| CMPD | Crisis Management and Planning Directorate |
| CNES | Centre National d'Etudes Spatiales |
| CoCom | Coordinating Committee for Multilateral Export Controls |
| COMECON | Council for Mutual Economic Assistance |
| COSMO-SkyMed | Constellation of small Satellites for Mediterranean basin Observation |
| CPCC | Civilian Planning and Conduct Capability |
| CSDP | Common Security and Defence Policy |
| DASA | Daimler Benz Aerospace |
| DGE | Directorate General for External Relations |
| DOD | Department of Defense |
| EADC | European Aerospace and Defence Company |
| EADS | European Aeronautic Defence and Space Company |
| EC | European Community |
| ECAP | European Capabilities Action Plan |
| EDA | European Defence Agency |
| EEAS | European External Action Service |
| EGNOS | European Geostationary Navigation Overlay Service |
| ESA | European Space Agency |

| Acronym | Explanation |
|----------------|---|
| ESDI | European Security and Defence Identity |
| ESDP | European Security and Defence Policy |
| ESP | European Space Policy |
| ESRAB | European Security Research Advisory Board |
| ESS | European Security Strategy |
| ESTMP | European Space Technology Master Plan |
| EU | European Union |
| EUISS | European Union Institute for Security Studies |
| EUMC | European Union Military Committee |
| EUMETSAT | European Organisation for the Exploitation of Meteorological Satellites |
| EUMS | European Union Military Staff |
| EUPM | European Union Policy Mission in Bosnia and Herzegovina |
| EUSC | European Union Satellite Centre |
| FP7 | Seventh Framework Programme |
| FSJ | Freedom, Security and Justice |
| FYROM | former Yugoslav Republic of Macedonia |
| GMES | Global Monitoring for Environment and Security |
| GNSS | Global Navigation Satellite System |
| GOP | Group of Personalities in the field of Security Research |
| GPS | Global Positioning System |
| GSE | GMES Services Element |
| ITAR | International Trade in Arms Regulation |
| LIMES | Land and Sea Integrated Monitoring for Environment and Security |
| MTCR | Missile Technology Control Regime |
| MUSIS | Multi Space-based Imaging System |
| NATO | North Atlantic Treaty Organisation |
| NGO | Non-Governmental Organisation |
| NPT | Non-Proliferation Treaty |
| NSF | National Science Foundation |
| OCCAR | Organisme Conjoint de Coopération en Matière d'Armement |
| OECD | Organisation for Economic Cooperation and Development |
| OHQ | Operational Headquarter |
| ORFEO | Optic and Radar Federated Earth Observation |
| PASR | Preparatory Action in the field of Security Research |
| PESCO | Permanent Structured Cooperation |
| PPP | Public-Private Partnership |
| PRS | Public Regulated Service |
| PSC | Political and Security Committee |
| PSO | Peace Support Operation |



| Acronym | Explanation |
|----------------|---|
| R&D | Research and Development |
| RMA | Revolution in Military Affairs |
| RTD | Research and Technology Development |
| SA | Supervisory Authority |
| SAR | Synthetic Aperture Radar |
| SATCOM | Satellite Communications |
| SEDE | Subcommittee on Security and Defence |
| SG/HR | Secretary General/High Representative |
| SPOT | Système Probatoire d'Observation de la Terre |
| SSA | Space Situational Awareness |
| TEU | Treaty on European Union |
| TFEU | Treaty on the Functioning of the European Union |
| TRP | Technology Reinvestment Project |
| UAS | Unmanned Aerial Systems |
| UK | United Kingdom |
| UN | United Nations |
| USML | US Munitions List |
| US | United States |
| USSR | Union of Soviet Socialist Republics |
| WEU | Western European Union |
| WTO | World Trade Organisation |

Annex

A.1 Chronology

| | |
|-----------------------|---|
| 14 Nov 2012 | Commission communication on EU-ESA relations |
| 17 Sep 2012 | Westerwelle Report |
| 20 Jun 2011 | ESA-EDA Administrative Arrangement |
| May 2011 | Programme Decision for the management by OCCAR of the Preliminary Definition Phase ('Phase B') of the MUSIS-Federating Activities Programme |
| 25/26 Mar 2010 | Internal Security Strategy |
| 2009 | Establishment of the JTF on Civil-Military Synergies in the field of Earth Observation |
| 1 Dec 2009 | Entry into force of the Lisbon Treaty |
| 1 Jan 2009 | Launch of ESA SSA Preparatory Programme |
| 11 Dec 2008 | ESS implementation report |
| 2007 | Statement on UN-EU Cooperation in Crisis Management |
| 13 Dec 2007 | Signing of the Lisbon Treaty |
| 26 Apr 2007 | European Space Policy |
| Jan 2007 | Chinese ASAT test |
| Mar 2005 | SPASEC Report |
| 2004 | Report of the GOP |
| 16 Nov 2004 | Council's European space policy "ESDP and Space" |
| 29 Oct 2004 | Signing of the Constitutional Treaty |
| 12 Jul 2004 | Council Joint Action establishing the EDA |
| May 2004 | Entry into force of the EC/ESA Framework Agreement |
| 2003 | Establishment of PASR (2004-2006) |
| 2003 | Joint Declaration on UN-EU Cooperation in Crisis Management |
| 13 Dec 2003 | Releasing of the ESS |
| 12 Nov 2003 | Signing of the ESA-EC Framework Agreement |
| 11 Nov 2003 | White Paper |
| Jul 2003 | Presentation of the Draft Constitutional Treaty |
| 19 May 2003 | Council recognition of the importance of space for crisis management |
| 31 Mar 2003 | First EU crisis management operation (FYROM) (military) |
| 19 Mar 2003 | Beginning of the Iraq War |
| 17 Mar 2003 | Berlin Plus Arrangements |
| 1 Feb 2003 | Entry into force of the Nice Treaty |
| 21 Jan 2003 | Green Paper |



| | |
|-----------------------|--|
| Jan 2003 | First EU crisis management mission (EUPM) (civil) |
| 2002 | EU-NATO joint declaration on the ESDP |
| Dec 2002 | NATO-EU Declaration on ESDP |
| Nov 2002 | Wise Men Report |
| Jul 2002 | STAR 21 Report |
| Dec 2001 | Establishment of the European Convention |
| 26 Feb 2001 | Signing of the Nice Treaty |
| Jul 2000 | Letter of Intent Framework Agreement |
| Mar 2000 | Letter by Antonio Rodotà to Carl Bildt |
| 10/11 Dec 1999 | Helsinki European Council |
| Jul 1999 | Launch of the Galileo programme |
| 3-4 Jun 1999 | Cologne European Council and the launch of the ESDP |
| 1 May 1999 | Entry into force of the Amsterdam Treaty |
| Mar 1999 | NATO intervention in Kosovo |
| Jan 1999 | Entry into force of the US decision to include almost all space technologies into the US Munitions List (USML) of the ITAR |
| Dec 1998 | Franco-British Saint-Malo Declaration on European Defence |
| Oct 1998 | Launch of the GMES initiative |
| Mar 1998 | Beginning of the Kosovo conflict |
| 2 Oct 1997 | Signing of the Amsterdam Treaty |
| 24 Sep 1997 | Commission Communication on aerospace industry |
| 4 Dec 1996 | Commission Communication on space industry |
| Nov 1996 | Establishment of the OCCAR |
| 24 Jan 1996 | Commission Communication on defence-related industry |
| 1995 | Wassenaar Arrangement |
| 15 Apr 1994 | Establishment of the WTO |
| 1 Nov 1993 | Entry into force of the Maastricht Treaty |
| 19 Jun 1992 | WEU Petersberg Declaration |
| 7 Feb 1992 | Signing of the Maastricht Treaty |

A.2 Synoptic Table of the EU Treaties' Articles Concerning and Affecting the CFSP and Space

The following table compares the EU Treaties' Articles concerning and affecting the CFSP and the Space policy. To the Articles of the TEU and of the TFEU (listed in the order in which they appear in the Treaties) corresponds the relevant Articles of previous Treaties. Relevant Protocols and Declarations follow the Articles of the TFEU. The content of the Articles is not always reported in full. For the full content, please refer to the text of the Treaties.

| Lisbon Treaty (2007-2009) | Constitutional Treaty (2004-Never entered into force) | Nice Treaty (2001-2003) | Amsterdam Treaty (1997-1999) | Maastricht Treaty (1992-1993) |
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| Treaty on European Union (TEU) Title I "Common Provisions" | | | | |
| Article 1 By this Treaty, the High Contracting Parties establish among themselves a European Union [...] on which the Member States confer competences to attain objectives they have in common. This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union [...] . Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community. | Article I-1 1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common . The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise on a Community basis the competences they confer on it. 2. The Union shall be open to all European States which respect its values and are committed to promoting them together. | Article 1 TEU By this Treaty, the High Contracting Parties establish among themselves a European Union [...] . This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. | Article 1 TEU By this Treaty, the High Contracting Parties establish among themselves a European Union [...] . This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen. The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. [...] | Article A TEU By this Treaty, the High Contracting Parties establish among themselves a European Union [...] . This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen. The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. [...] |
| Article 2 The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. | Article I-2 The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. | -- | -- | -- |
| Article 3 1. The Union's aim is to promote peace, its values and the well-being of its peoples. | Article I-3 1. The Union's aim is to promote peace, its values and the well-being of its peoples. | Article 2 TEU The Union shall set itself the following objectives: - to promote economic | Article 2 TEU The Union shall set itself the following objectives: - to promote eco- | Article B TEU The Union shall set itself the following objectives: - to promote eco- |



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| <p>2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.</p> <p>3. The Union shall establish an internal market. [...]. It shall promote scientific and technological advance.</p> <p>4. <i>The Union shall establish an economic and monetary union whose currency is the euro.</i> [...]</p> <p>5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights [...] as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. [...]</p> | <p>2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted.</p> <p>3. The Union [...] shall promote scientific and technological advance. [...]</p> <p>4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights [...] as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. [...]</p> | <p>and social progress and a high level of employment and to achieve balanced and sustainable development [...] and through the establishment of economic and monetary union, ultimately including a single currency [...];</p> <p>- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the <i>progressive</i> framing of a common defence policy, which <i>might</i> lead to a common defence, in accordance with the provisions of Article 17, [...]</p> <p>- to maintain and develop the Union as an area of freedom, security and justice in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime, [...]</p> | <p>conomic and social progress and a high level of employment and to achieve balanced and sustainable development [...] and through the establishment of economic and monetary union, ultimately including a single currency [...];</p> <p>- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the <i>progressive</i> framing of a common defence policy, which <i>might in time</i> lead to a common defence, in accordance with the provisions of Article 17; [...]</p> <p>- to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime; [...]</p> | <p>conomic and social progress which is balanced and sustainable [...] and through the establishment of economic and monetary union, ultimately including a single currency [...];</p> <p>- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the <i>eventual</i> framing of a common defence policy, which <i>might in time</i> lead to a common defence; [...]</p> <p>- to develop close cooperation on justice and home affairs; [...]</p> |
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| | | in the context of its external relations, security , economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end . They shall ensure the implementation of these policies, each in accordance with its respective powers. | a whole in the context of its external relations, security , economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end . They shall ensure the implementation of these policies, each in accordance with its respective powers. | a whole in the context of its external relations, security , economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency. They shall ensure the implementation of these policies, each in accordance with its respective powers. |
| Article 4(1) In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States. | -- | -- | -- | -- |
| Article 5 1. The limits of Union competences are governed by the principle of conferral . The use of Union competences is governed by the principles of subsidiarity and proportionality . 2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. 3. Under the principle of subsidiarity , in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality . [...] 4. Under the principle of proportionality , the content and form of Union action shall not exceed what is necessary to achieve the objectives of | Article I-11 1. The limits of Union competences are governed by the principle of conferral . The use of Union competences is governed by the principles of subsidiarity and proportionality . 2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States. 3. Under the principle of subsidiarity , in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality . [...] 4. Under the principle of proportionality , the content and form of Union action shall not exceed what is necessary to achieve the objectives of | Article 5 Treaty Establishing the European Community The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity , only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty. | Article 5 Treaty Establishing the European Community The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity , only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty. | Article 3b Treaty Establishing the European Community The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity , only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty. |



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| the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality . | the Constitution. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality . | | | |
| -- | Article I-18 "Flexibility clause" 1. If action by the Union should prove necessary, within the framework of the policies defined in Part III, to attain one of the objectives set out in the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers, acting unanimously on a proposal from the European Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. [...] | -- | -- | -- |
| Title III TEU "Provisions on the Institutions" | | | | |
| Article 13 [...] The Union's institutions shall be: - the European Parliament , - the European Council , - the Council , - the European Commission [...], - the Court of Justice of the European Union , - the European Central Bank , - the Court of Auditors . | Article I-19 [...] This institutional framework comprises: - The European Parliament , - The European Council , - The Council of Ministers [...], - The European Commission [...], - The Court of Justice of the European Union . | Treaty on Establishing the European Communities Part Five [- The European Parliament (Artt. 189-201), - the Council (Artt. 202-210), - the Commission (Artt. 211-219), - the Court of Justice (Artt. 220-245) - the Court of Auditors (Artt. 246-248)] | Treaty on Establishing the European Communities Article 4 The tasks entrusted to the Community shall be carried out by the following institutions: - a European Parliament , - a Council , - a Commission , - a Court of Justice , - a Court of Auditors . | |
| Article 14(1) The European Parliament shall, jointly with the Council , exercise legislative and budgetary functions . It shall exercise functions of political control and consultation as laid down in the Treaties . It shall elect the President of the Commission . [...] | Article I-20 The European Parliament shall, jointly with the Council , exercise legislative and budgetary functions . It shall exercise functions of political control and consultation as laid down in the Constitution . It shall elect the President of the Commission . [...] | Treaty on Establishing the European Communities Article 192 In so far as provided in this Treaty, the European Parliament shall participate in the process leading up to the adoption of Community acts by exercising its powers under the procedures laid down in Articles 251 and 252 and by giving its assent or delivering advisory opinions. [...] | | |
| Article 15 1. The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and | Article I-21 1. The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions | Article 4 TEU The European Council shall provide the Union with the necessary impetus for its development and shall define the general | Article 4 TEU The European Council shall provide the Union with the necessary impetus for its development and shall define the gen- | Article D TEU The European Council shall provide the Union with the necessary impetus for its development and shall |

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| <p>priorities thereof. It shall not exercise legislative functions.</p> <p>2. [...] The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work. [...]</p> <p>4. Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus. [...]</p> <p>The President of the European Council shall, at <i>his</i> level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.</p> | <p>and priorities thereof. It shall not exercise legislative functions.</p> <p>2. [...] The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work. [...]</p> <p>4. Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus. [...]</p> <p>Article I-22(2)</p> <p>[...]</p> <p>The President of the European Council shall, at <i>his or her</i> level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the <i>Union Minister for Foreign Affairs.</i></p> | <p>political guidelines thereof. [...]</p> | <p>eral political guidelines thereof.</p> | <p>define the general political guidelines thereof.</p> |
| <p>Article 16</p> <p>1. The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. [...]</p> <p>3. The Council shall act by a qualified majority except where the Treaties provide otherwise. [...]</p> <p>6. [...] The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.</p> | <p>Article I-23</p> <p>1. The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. [...]</p> <p>3. The Council shall act by a qualified majority except where the Treaties provide otherwise.</p> <p>Article I-24(3)</p> <p>The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.</p> | | | |
| <p>Article 18</p> <p>1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may end <i>his</i> term of office by the same procedure.</p> <p>2. The High Representative shall conduct the Union's common foreign and security policy. <i>He</i> shall contribute by his proposals to the development of that policy, which <i>he</i> shall carry out as mandated by the Council. The</p> | <p>Article I-28</p> <p>1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs. The European Council may end <i>his or her</i> term of office by the same procedure.</p> <p>2. The Union Minister for Foreign Affairs shall conduct the Union's common foreign and security policy. <i>He or she</i> shall contribute by his or her proposals to the development of that policy, which <i>he or she</i></p> | <p>Article 26 TEU</p> <p>The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the</p> | <p>Article 26 TEU</p> <p>The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of</p> | <p>--</p> |



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| <p>same shall apply to the common security and defence policy.</p> <p>3. The High Representative shall preside over the Foreign Affairs Council.</p> <p>4. The High Representative shall be one of the Vice-Presidents of the Commission. <i>He</i> shall ensure the consistency of the Union's external action. <i>He</i> shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. [...]</p> | <p>shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.</p> <p>3. The Union Minister for Foreign Affairs shall preside over the Foreign Affairs Council.</p> <p>4. The Union Minister for Foreign Affairs shall be one of the Vice Presidents of the Commission. <i>He or she</i> shall ensure the consistency of the Union's external action. <i>He or she</i> shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. [...]</p> | <p>common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.</p> | <p>the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.</p> | |
| <p>Title IV TEU "Provisions on Enhanced Cooperation"</p> | | | | |
| <p>Article 20</p> <p>1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union. [...]</p> <p>2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort [...] and provided that at least nine Member States participate in it.</p> | <p>Article I-44</p> <p>1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Constitution, subject to the limits and in accordance with the procedures laid down in this Article and in Articles III-416 to III-423. [...]</p> | <p>Title VII TEU Provisions on enhanced cooperation Article 43</p> <p>Member States which intend to establish enhanced cooperation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and by the Treaty establishing the European Community provided that the proposed cooperation:</p> <p>[...]</p> <p>(g) involves a minimum of eight Member States;</p> <p>[...]</p> <p>Article 27a TEU</p> <p>1. Enhanced cooperation in any of the areas referred to in this title [Title V on CFSP] shall be aimed at safeguarding the values and serving the interests of the Union as a whole by asserting its identity as a coherent force on the international scene. [...]</p> <p>Article 27b TEU</p> <p>Enhanced cooperation pursuant to this title [Title V on CFSP] shall relate to implementation of a joint action or</p> | <p>Title VII TEU Provisions on closer co-operation Article 43</p> <p>Member States which intend to establish closer co-operation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and the Treaty establishing the European Community provided that the cooperation:</p> <p>[...]</p> <p>(d) concerns at least a majority of Member States; [...]</p> | <p>--</p> |

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| | | a common position. It shall not relate to matters having military or defence implications. | | |
| Title V TEU Chapter 1 "General provisions on the Union's External Action" | | | | |
| <p>Article 21</p> <p>1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.</p> <p>2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:</p> <p>(a) safeguard its values, fundamental interests, security, independence and integrity; (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;</p> | <p>Part III ("Policies and function of the Union") Title III ("Internal policies and action") Title V ("The Union's external action") Article III-292</p> <p>1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.</p> <p>2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:</p> <p>(a) safeguard its values, fundamental interests, security, independence and integrity; (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;</p> | <p>Title V "Provision on a Common Foreign and Security Policy" Article 11(1)</p> <p>The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:</p> <p>— to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter, — to strengthen the security of the Union</p> | <p>Title V "Provision on a Common Foreign and Security Policy" Article 11(1)</p> <p>The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:</p> <p>- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter; - to strengthen the security of the</p> | <p>Title V "Provision on a Common Foreign and Security Policy" Article J.1</p> <p>1. The Union and its Member States shall define and implement a common foreign and security policy, governed by the provisions of this Title and covering all areas of foreign and security policy. 2. The objectives of the common foreign and security policy shall be: - to safeguard the common values, fundamental interests and independence of the Union; - to strengthen the security of the</p> |



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| <p>(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;</p> <p>(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;</p> <p>(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;</p> <p>(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;</p> <p>(g) assist populations, countries and regions confronting natural or man-made disasters;</p> <p>and</p> <p>(h) promote an international system based on stronger multilateral cooperation and good global governance.</p> <p>3. [...] The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.</p> | <p>(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;</p> <p>(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;</p> <p>(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;</p> <p>(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;</p> <p>(g) assist populations, countries and regions confronting natural or man-made disasters;</p> <p>(h) promote an international system based on stronger multilateral cooperation and good global governance.</p> <p>3. [...] <i>The Council and the Commission, assisted by the Union Minister for Foreign Affairs</i>, shall ensure that consistency and shall cooperate to that effect.</p> | <p>in all ways,</p> <p>— to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,</p> <p>— to promote international cooperation,</p> <p>— to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.</p> | <p>Union in all ways:</p> <p>- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;</p> <p>- to promote international co-operation;</p> <p>- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.</p> | <p>Union and its Member States in all ways:</p> <p>- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;</p> <p>- to promote international cooperation;</p> <p>- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.</p> <p>3. The Union shall pursue these objectives:</p> <p>- by establishing systematic cooperation between Member States in the conduct of policy, in accordance with Article J.2;</p> <p>- by gradually implementing, in accordance with Article J.3, joint action in the areas in which the Member States have important interests in common.</p> <p>[...]</p> |
| <p>Article 22</p> <p>1. On the basis of the principles and objectives set out in Article 21, the European Council shall identify the strategic interests and objectives of the Union. [...]</p> <p>The European Council shall act unanimously on a recommendation from the Council [...].</p> <p>2. The High Representative of the Union for Foreign Affairs and Security Policy, for the area of common foreign and security policy, and the Commission, for other areas of external</p> | <p>Article I-40(2)</p> <p>The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. [...]</p> <p>Article I-40(6)</p> <p>[...] The European Council and the Council shall act on an initiative from a Member State, on a proposal from the Union Minister for Foreign Affairs or on a proposal from that</p> | <p>Article 13(1) TEU</p> <p>The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.</p> | <p>Article 13(1) TEU</p> <p>The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.</p> | <p>Article J.8(1) TEU</p> <p>The European Council shall define the principles of and general guidelines for the common foreign and security policy.</p> |



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| <p>The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. [...]</p> <p>2. Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.</p> <p>3. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area. [...]</p> <p>The Council and the High Representative shall ensure compliance with these principles.</p> | <p>Article I-40(4)</p> <p>The common foreign and security policy shall be put into effect by the Union Minister for Foreign Affairs and by the Member States, using national and Union resources.</p> <p>Article I-40(1)</p> <p>The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions. [...]</p> | <p>Article 11(2) TEU</p> <p>The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. [...]</p> <p>The Council shall ensure that these principles are complied with.</p> | <p>Article 11(2) TEU</p> <p>The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. [...]</p> <p>The Council shall ensure that these principles are complied with.</p> | <p>Article J.1(4) TEU</p> <p>The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. [...]</p> <p>The Council shall ensure that these principles are complied with.</p> |
| <p>Article 25</p> <p>The Union shall conduct the common foreign and security policy by:</p> <p>(a) defining the general guidelines;</p> <p>(b) adopting decisions defining:</p> <ul style="list-style-type: none"> - (i) actions to be undertaken by the Union; - (ii) positions to be taken by the Union; - (iii) arrangements for the implementation of the decisions referred to in points (i) and (ii); <p>and by</p> <p>(c) strengthening systematic cooperation between Member States in the conduct of policy.</p> | <p>--</p> | <p>Article 12 TEU</p> <p>The Union shall pursue the objectives set out in Article 11 by:</p> <ul style="list-style-type: none"> - defining the principles of and general guidelines for the common foreign and security policy; - deciding on common strategies, - adopting joint actions, - adopting common positions, - strengthening systematic cooperation between Member States in the conduct of policy. | <p>Article 12 TEU</p> <p>The Union shall pursue the objectives set out in Article 11 by:</p> <ul style="list-style-type: none"> - defining the principles of and general guidelines for the common foreign and security policy; - deciding on common strategies; - adopting joint actions; - adopting common positions; - strengthening systematic cooperation between Member States in the conduct of policy. | <p>Article J.1(3) TEU</p> <p>The Union shall pursue these objectives [see Article J.1(1)]:</p> <ul style="list-style-type: none"> - by establishing systematic cooperation between Member States in the conduct of policy, in accordance with Article J.2; - by <i>gradually</i> implementing [...] joint action [...]. <p>Article J.2(2)</p> <p>Whenever it deems it necessary, the Council shall define a common position. [...]</p> |
| | <p>Article I-40</p> <p>1. The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of</p> | | | <p>--</p> |

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| <p>Article 26</p> <p>1. The European Council shall identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, <i>including for matters with defence implications</i>. It shall adopt the necessary decisions. If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments.</p> <p>2. The Council shall frame the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council. [...]</p> <p>3. The common foreign and security policy shall be put into effect by the High Representative and by the Member States, using national and Union resources.</p> | <p>convergence of Member States' actions.</p> <p>2. The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy.</p> <p>The Council shall frame this policy within the framework of the strategic guidelines established by the European Council and in accordance with Part III.</p> <p>3. The European Council and the Council shall adopt the necessary European decisions.</p> <p>4. The common foreign and security policy shall be put into effect by the <i>Union Minister for Foreign Affairs and by the Member States, using national and Union resources</i>. [...]</p> | <p>Article 13 TEU</p> <p>1. The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.</p> <p>2. The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common. [...]</p> <p>3. The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council. The Council shall recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions. The Council shall ensure the unity, consistency and effectiveness of action by the Union.</p> | <p>Article 13 TEU</p> <p>1. The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.</p> <p>2. The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common. [...]</p> <p>3. The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council. The Council shall recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions. The Council shall ensure the unity, consistency and effectiveness of action by the Union.</p> | |
| <p>Article 27</p> <p>1. The High Representative of the Union for Foreign Affairs and Security Policy, who shall chair the Foreign Affairs Council, shall contribute through <i>his</i> proposals to the development of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council.</p> <p>2. The High Representative shall represent the Union for matters relating to the common foreign and security policy. <i>He</i> shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.</p> | <p>Article III-296</p> <p>1. The Union Minister for Foreign Affairs, who shall chair the Foreign Affairs Council, shall contribute through his or her proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the European decisions adopted by the European Council and the Council.</p> <p>2. The Minister for Foreign Affairs shall represent the Union for matters relating to the common foreign and security policy. <i>He or she</i> shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.</p> | <p>Article 18 TEU</p> <p>1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.</p> <p>2. The Presidency shall be responsible for the implementation of decisions taken under this title; in that capacity it shall in principle express the position of the Union in international organisations and international conferences.</p> | <p>Article 18 TEU</p> <p>1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.</p> <p>2. The Presidency shall be responsible for the implementation of decisions taken under this Title; in that capacity it shall in principle express the position of the Union in international organisations and inter-</p> | <p>Article J.5 TEU</p> <p>1. The Presidency shall represent the Union in matters coming within the common foreign and security policy. 2. The Presidency shall be responsible for the implementation of common measures; in that capacity it shall in principle express the position of the Union in international organisations and international conferences.</p> |



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| <p>3. In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.</p> | <p>3. In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a European decision of the Council. The Council shall act on a proposal from the Union Minister for Foreign Affairs after consulting the European Parliament and after obtaining the consent of the Commission.</p> | <p>3. The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.</p> <p>4. The Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2. The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency.</p> <p>5. The Council may, whenever it deems it necessary, appoint a special representative with a mandate in relation to particular policy issues.</p> | <p>national conferences.</p> <p>3. The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.</p> <p>4. The Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2. The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency.</p> <p>5. The Council may, whenever it deems it necessary, appoint a special representative with a mandate in relation to particular policy issues.</p> | <p>3. In the tasks referred to in paragraphs 1 and 2, the Presidency shall be assisted if need be by the previous and next Member States to hold the Presidency. The Commission shall be fully associated in these tasks.</p> <p>4. Without prejudice to Article J.2(3) and Article J.3(4), Member States represented in international organizations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest. Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.</p> |
| <p>Article 28</p> <p>1. Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation. [...]</p> | <p>Article III-297</p> <p>1. Where the international situation requires operational action by the Union, the Council shall adopt the necessary European decisions. Such decisions shall lay down the objectives, the scope, the means to be made available to the Union, if necessary the duration, and the conditions for implementation of the action. [...]</p> | <p>Article 14 TEU</p> <p>1. The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation. [...]</p> | <p>Article 14 TEU</p> <p>1. The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation. [...]</p> | <p>Article J.3 TEU</p> <p>The procedure for adopting joint action in matters covered by the foreign and security policy shall be the following:</p> <p>1. The Council shall decide, on the basis of general guidelines from the European Council, that a matter should be the subject of joint action. Whenever the Council decides on the principle of joint action, it shall lay down the specific scope, the Union's general and specific objectives in carrying out such action, if necessary its duration, and the means, procedures and conditions for its implementation.</p> |

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| <p>Article 29</p> <p>The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the Union positions.</p> | <p>Article III-298</p> <p>The Council shall adopt European decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the positions of the Union.</p> | <p>Article 15 TEU</p> <p>The Council shall adopt common positions. Common positions shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common positions.</p> | <p>Article 15 TEU</p> <p>The Council shall adopt common positions. Common positions shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common positions.</p> | <p>--</p> |
| <p>Article 30</p> <p>1. Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer any question relating to the common foreign and security policy to the Council and may submit to it, respectively, initiatives or proposals.</p> <p>2. In cases requiring a rapid decision, the High Representative, of his own motion, or at the request of a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.</p> | <p>Article III-299</p> <p>1. Any Member State, the Union Minister for Foreign Affairs, or that Minister with the Commission's support, may refer any question relating to the common foreign and security policy to the Council and may submit to it initiatives or proposals as appropriate.</p> <p>2. In cases requiring a rapid decision, the Union Minister for Foreign Affairs, of the Minister's own motion or at the request of a Member State, shall convene an extraordinary meeting of the Council within forty-eight hours or, in an emergency, within a shorter period.</p> | <p>Article 16 TEU</p> <p>Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action.</p> | <p>Article 16 TEU</p> <p>Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action.</p> | <p>Article J.6 TEU</p> <p>The diplomatic and consular missions of the Member States and the Commission Delegations in third countries and international conferences, and their representations to international organizations, shall cooperate in ensuring that the common positions and common measures adopted by the Council are complied with and implemented.</p> <p>They shall step up cooperation by exchanging information, carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 8c of the Treaty establishing the European Community.</p> |
| <p>Article 31</p> <p>1. Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. The adoption of legislative acts shall be excluded. [...]</p> <p>2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:</p> <ul style="list-style-type: none"> – when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 22(1), – when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request | <p>Article III-300</p> <p>1. The European decisions referred to in this Chapter shall be adopted by the Council acting unanimously. [...]</p> <p>2. By way of derogation from paragraph 1, the Council shall act by a qualified majority:</p> <ul style="list-style-type: none"> (a) when adopting European decisions defining a Union action or position on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article III-293(1); (b) when adopting a European decision defining a Union action or position, on a proposal which the Union Minister for Foreign | <p>Article 23 TEU</p> <p>1. Decisions under this title shall be taken by the Council acting unanimously. [...]</p> <p>2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:</p> <ul style="list-style-type: none"> – when adopting joint actions, common positions or taking any other decision on the basis of a common strategy, – when adopting any decision implementing a joint action or a common position, – when appointing a special representative in accordance with Article 18(5). <p>[...]</p> | <p>Article 23 TEU</p> <p>1. Decisions under this Title shall be taken by the Council acting unanimously. [...]</p> <p>2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:</p> <ul style="list-style-type: none"> - when adopting joint actions, common positions or taking any other decision on the basis of a common strategy; - when adopting any decision implementing a joint action or a common position. [...] | <p>Article J.8(2) TEU</p> <p>[...] The Council shall act unanimously, except for procedural questions and in the case referred to in Article J.3(2).</p> <p>Article J.3(2) TEU</p> <p>The Council shall, when adopting the joint action and at any stage during its development, define those matters on which decisions are to be taken by a qualified majority. [...]</p> |



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| <p>from the European Council, made on its own initiative or that of the High Representative,</p> <ul style="list-style-type: none"> – when adopting any decision implementing a decision defining a Union action or position, – when appointing a special representative in accordance with Article 33. [...] <p>3. The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.</p> <p>4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications. [...]</p> | <p>Affairs has presented following a specific request to him or her from the European Council, made on its own initiative or that of the Minister;</p> <ul style="list-style-type: none"> (c) when adopting a European decision implementing a European decision defining a Union action or position; (d) when adopting a European decision concerning the appointment of a special representative in accordance with Article III-302. [...] <p>3. In accordance with Article I-40(7) the European Council may unanimously adopt a European decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 of this Article.</p> <p>4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.</p> | <p>This paragraph shall not apply to decisions having military or defence implications.</p> | <p>This paragraph shall not apply to decisions having military or defence implications.</p> | <p>Article J.4(3) TEU</p> <p>Issues having defence implications dealt with under this Article shall not be subject to the procedures set out in Article J.3.</p> |
| <p>Article 36</p> <p>The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration. [...]</p> <p>The European Parliament may address questions or make recommendations to the Council or the High Representative. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.</p> | <p>Article I-41(8)</p> <p>The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy. It shall be kept informed of how it evolves.</p> <p>Article III-304</p> <p>1. The <i>Union Minister for Foreign Affairs</i> shall consult and inform the European Parliament in accordance with Article I-40(8) and Article I-41(8). He or she shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.</p> <p>2. The European Parliament may ask questions of the Council and of the <i>Union Minister for Foreign Affairs</i> or make recommendations to them. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.</p> | <p>Article 21 TEU</p> <p>The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. [...]</p> <p>The European Parliament may ask questions of the <i>Council</i> or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.</p> | <p>Article J.11 TEU</p> <p>The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. [...]</p> <p>The European Parliament may ask questions of the <i>Council</i> or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.</p> | <p>Article J.7 TEU</p> <p>The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. [...]</p> <p>The European Parliament may ask questions of the <i>Council</i> or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.</p> |

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| <p>Article 37</p> <p>The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter.</p> | <p>Article III-303</p> <p>The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter [Chapter II on CFSP].</p> | <p>--</p> | <p>--</p> | <p>--</p> |
| <p>Article 38</p> <p>[...] a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or of the High Representative of the Union for Foreign Affairs and Security Policy or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the powers of the High Representative.</p> <p>Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the High Representative, the political control and strategic direction of the crisis management operations referred to in Article 43. The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation.</p> | <p>Article III-307</p> <p>[...] a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the latter, or of the Union Minister for Foreign Affairs, or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the powers of the Union Minister for Foreign Affairs.</p> <p>2. Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the Union Minister for Foreign Affairs, the political control and strategic direction of the crisis management operations referred to in Article III-309. The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant measures concerning the political control and strategic direction of the operation.</p> | <p>Article 25 TEU</p> <p>[...] a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.</p> <p>Within the scope of this title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations. The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation, without prejudice to Article 47.</p> | <p>Article 25 TEU</p> <p>[...] a Political Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.</p> | <p>Article J.8(5) TEU</p> <p>[...] a Political Committee consisting of Political Directors shall monitor the international situation in the areas covered by common foreign and security policy and contribute to the definition of policies [...].</p> |
| <p>Article 41</p> <p>1. Administrative expenditure to which the implementation of this Chapter gives rise for the institutions shall be charged to the Union budget.</p> <p>2. Operating expenditure [...] shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.</p> | <p>Article III-313</p> <p>1. Administrative expenditure which the implementation of this Chapter entails for the institutions shall be charged to the Union budget.</p> <p>2. Operating expenditure [...] shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council decides otherwise.</p> | <p>Article 28 TEU</p> <p>[...]</p> <p>2. Administrative expenditure which the provisions relating to the areas referred to in this title [Title V on CFSP] entail for the institutions shall be charged to the budget of the European Communities.</p> <p>3. Operating expenditure [...] shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implications and cases where</p> | <p>Article J-18 TEU</p> <p>[...]</p> <p>2. Administrative expenditure which the provisions relating to the areas referred to in this Title [Title V on CFSP] entail for the institutions shall be charged to the budget of the European Communities.</p> <p>3. Operational expenditure [...] shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implica-</p> | <p>Article J.11 TEU</p> <p>[...]</p> <p>2. Administrative expenditure which the provisions relating to the areas referred to in this Title [Title V on CFSP] entail for the institutions shall be charged to the budget of the European Communities. The Council may also: - either <i>decide unanimously that operational expenditure</i> [...] <i>is to be charged to the budget of the European Communities;</i> in that event, the</p> |



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| <p>In cases where expenditure is not charged to the Union budget, it shall be charged to the Member States [...]</p> <p>3. The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article 42(1) and Article 43. It shall act after consulting the European Parliament.</p> <p>Preparatory activities for the tasks referred to in Article 42(1) and Article 43 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.</p> <p>The Council shall adopt by a qualified majority, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, decisions establishing:</p> <p>(a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;</p> <p>(b) the procedures for administering the start-up fund;</p> <p>(c) the financial control procedures.</p> <p>When the task planned in accordance with Article 42(1) and Article 43 cannot be charged to the Union budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.</p> | <p>In cases where expenditure is not charged to the Union budget it shall be charged to the Member States [...]</p> <p>3. The Council shall adopt a European decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article I-41(1) and Article III-309. It shall act after consulting the European Parliament.</p> <p>Preparatory activities for the tasks referred to in Article I-41(1) and Article III-309 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions. The Council shall adopt by a qualified majority, on a proposal from the Union <i>Minister for Foreign Affairs</i>, European decisions establishing:</p> <p>(a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;</p> <p>(b) the procedures for administering the start-up fund;</p> <p>(c) the financial control procedures.</p> <p>When the task planned in accordance with Article I-41(1) and Article III-309 cannot be charged to the Union budget, the Council shall authorise the Union Minister for Foreign Affairs to use the fund. The Union <i>Minister for Foreign Affairs</i> shall report to the Council on the implementation of this remit.</p> | <p>the Council acting unanimously decides otherwise.</p> <p>In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States [...]</p> <p>4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.</p> | <p>tions and cases where the Council acting unanimously decides otherwise.</p> <p>In cases where expenditure is not charged to the budget of the European Communities it shall be charged to the Member States [...]</p> <p>4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.</p> | <p>budgetary procedure laid down in the Treaty establishing the European Community shall be applicable;</p> <p>- or determine that such expenditure shall be charged to the Member States, where appropriate in accordance with a scale to be decided.</p> |
| <p>Article 42</p> <p>1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations</p> | <p>Article I-41(1)</p> <p>1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civil and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the</p> | <p>--</p> | <p>Article 17(1) TEU 2nd indentation</p> <p>The Western European Union (WEU) is an integral part of the development of the Union providing the Union with access to an operational capability notably in the context of paragraph 2. It supports the Union in framing the defence aspects of the common foreign and security policy as set out in</p> | <p>Article J.4(2) TEU</p> <p>The Union requests the Western European Union (WEU), which is an integral part of the development of the Union, to elaborate and implement decisions and actions of the Union which have defence implications. [...]</p> |

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| <p>Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.</p> <p>2. The common security and defence policy shall include the <i>progressive</i> framing of a common Union defence policy. This <i>will</i> lead to a common defence, when the European Council [...] so decides. [...]</p> | <p>principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.</p> <p>2. The common security and defence policy shall include the <i>pro-gressive</i> framing of a common Union defence policy. This <i>will</i> lead to a common defence, when the European Council [...] so decides. [...]</p> | | <p>this Article. The Union shall accordingly foster closer institutional relations with the WEU with a view to the possibility of the integration of the WEU into the Union, should the European Council so decide." [...]</p> <p>Article 17(3)</p> <p>The Union will avail itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications. [...]</p> | |
| <p>Article 42(3)</p> <p>Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.</p> <p>Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments [...] European Defence Agency) shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.</p> | <p>Article I-41(3)</p> <p>Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.</p> <p>Member States shall undertake progressively to improve their military capabilities. An Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency) shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.</p> | <p>Article 17(1) TEU</p> <p>[...]</p> <p>The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.</p> | <p>--</p> | <p>--</p> |
| <p>Article 42(5)</p> <p>The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by</p> | <p>Article I-41(5)</p> <p>The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be</p> | <p>--</p> | <p>--</p> | <p>--</p> |



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| <p>Article 44.</p> | <p>governed by Article III-310.</p> | | | |
| <p>Article 42(6)</p> <p>Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 46. [...].</p> | <p>Article I-41(6)</p> <p>Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article III-312. [...]</p> | <p>--</p> | <p>--</p> | <p>--</p> |
| <p>Article 41(7)</p> <p>If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power [...].</p> | <p>Article I-41(7)</p> <p>If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power [...].</p> | <p>--</p> | <p>--</p> | <p>--</p> |
| <p>Article 43</p> <p>1. The tasks referred to in Article 42(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.</p> <p>2. The Council shall adopt decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The High Representative of the Union for Foreign Affairs and Security Policy, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.</p> | <p>Article III-309</p> <p>1. The tasks referred to in Article I-41(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.</p> <p>2. The Council shall adopt European decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The Union Minister for Foreign Affairs, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.</p> | <p>Article 17(2) TEU</p> <p>Questions referred to in this Article shall include humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking.</p> | <p>Article 17(2) TEU</p> <p>Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.</p> | <p>--</p> |
| <p>Article 44</p> <p>1. Within the framework of the decisions adopted in</p> | <p>Article III-310</p> <p>1. Within the framework of the European decisions</p> | <p>--</p> | <p>--</p> | <p>--</p> |

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| <p>accordance with Article 43, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task. [...]</p> | <p>adopted in accordance with Article III-309, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the Union Minister for Foreign Affairs, shall agree among themselves on the management of the task. [...]</p> | | | |
| <p>Article 45</p> <p>1. The European Defence Agency referred to in Article 42(3), subject to the authority of the Council, shall have as its task to:</p> <p>(a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;</p> <p>(b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;</p> <p>(c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;</p> <p>(d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;</p> <p>(e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.</p> <p>2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall</p> | <p>Article III-311</p> <p>1. The Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), established by Article I-41(3) and subject to the authority of the Council, shall have as its task to:</p> <p>(a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;</p> <p>(b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;</p> <p>(c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;</p> <p>(d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;</p> <p>(e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.</p> <p>2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a European decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective</p> | <p>--</p> | <p>--</p> | <p>--</p> |



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| <p>be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.</p> | <p>participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.</p> | | | |
| <p>Article 46</p> <p>1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article 42(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation, shall notify their intention to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy.</p> <p>2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the High Representative.</p> <p>3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the High Representative. The Council shall adopt a decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the High Representative. Only members of the Council representing the participating Member States shall take part in the vote. A qualified majority shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.</p> | <p>Article III-312</p> <p>1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article 1-41(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation shall notify their intention to the Council and to the Union Minister for Foreign Affairs.</p> <p>2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a European decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs.</p> <p>3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the Union Minister for Foreign Affairs. The Council shall adopt a European decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs. Only members of the Council representing the participating Member States shall take part in the vote. A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States. A blocking minority must include at least the mini-</p> | <p>--</p> | <p>--</p> | <p>--</p> |

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| <p>4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a decision suspending the participation of the Member State concerned. The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote. A qualified majority shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.</p> <p>5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.</p> <p>6. The decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.</p> | <p>minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.</p> <p>4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a European decision suspending the participation of the Member State concerned. The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote. A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States. A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.</p> <p>5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.</p> <p>6. The <i>European</i> decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.</p> | | | |
| <p>Article 47</p> <p>The Union shall have legal personality.</p> | <p>Article I-7</p> <p>The Union shall have legal personality.</p> | <p>--</p> | <p>--</p> | <p>--</p> |



| Treaty on the Functioning of the European Union (TFEU) | | | | |
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| <p>Article 2</p> <p>1. When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.</p> <p>2. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence. [...]</p> <p>4. The Union shall have competence, <i>in accordance with the provisions of the Treaty on European Union</i>, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.</p> <p>5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.</p> <p>Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations. [...]</p> | <p>Article I-12</p> <p>1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.</p> <p>2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence. [...]</p> <p>4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.</p> <p>5. In certain areas and under the conditions laid down in the Constitution, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas. Legally binding acts of the Union adopted on the basis of the provisions in Part III relating to these areas shall not entail harmonisation of Member States' laws or regulations. [...]</p> | | | |
| <p>Article 4</p> <p>1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.</p> | <p>Article I-14</p> <p>1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-13</p> | -- | -- | -- |

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| <p>2. Shared competence between the Union and the Member States applies in the following principal areas:</p> <ul style="list-style-type: none"> (a) internal market; (b) social policy, for the aspects defined in this Treaty; (c) economic, social and territorial cohesion; (d) agriculture and fisheries, excluding the conservation of marine biological resources; (e) environment; (f) consumer protection; (g) transport; (h) trans-European networks; (i) energy; (j) area of freedom, security and justice; (k) common safety concerns in public health matters, for the aspects defined in this Treaty. <p>3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.</p> <p>4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.</p> | <p>and I-17.</p> <p>2. Shared competence between the Union and the Member States applies in the following principal areas:</p> <ul style="list-style-type: none"> (a) internal market; (b) social policy, for the aspects defined in Part III; (c) economic, social and territorial cohesion; (d) agriculture and fisheries, excluding the conservation of marine biological resources; (e) environment; (f) consumer protection; (g) transport; (h) trans-European networks; (i) energy; (j) area of freedom, security and justice; (k) common safety concerns in public health matters, for the aspects defined in Part III. <p>3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.</p> <p>4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.</p> | | | |
| <p>Article 71</p> <p>A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article 240, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.</p> | <p>Article III-261</p> <p>A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article III-344, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.</p> | -- | -- | -- |



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| <p>Article 189</p> <p>1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.</p> <p>2. To contribute to attaining the objectives referred to in paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the necessary measures, which may take the form of a European space programme, excluding any harmonisation of the laws and regulations of the Member States.</p> <p>3. The Union shall establish any appropriate relations with the European Space Agency.</p> <p>4. <i>This Article shall be without prejudice to the other provisions of this Title.</i></p> | <p>Article III-254</p> <p>1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.</p> <p>2. To contribute to attaining the objectives referred to in paragraph 1, European laws or framework laws shall establish the necessary measures, which may take the form of a European space programme.</p> <p>3. The Union shall establish any appropriate relations with the European Space Agency.</p> | <p>--</p> | <p>--</p> | <p>--</p> |
| <p>Article 222 “Solidarity clause”</p> <p>1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:</p> <p>(a) — prevent the terrorist threat in the territory of the Member States; — protect democratic institutions and the civilian population from any terrorist attack; — assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;</p> <p>(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.</p> | <p>Article I-43 “Solidarity clause”</p> <p>1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:</p> <p>(a) — prevent the terrorist threat in the territory of the Member States; — protect democratic institutions and the civilian population from any terrorist attack; — assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;</p> <p>(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.</p> <p>2. The detailed arrangements for implementing this Article are set out in Article III-329.</p> | <p>--</p> | <p>--</p> | <p>--</p> |

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| <p>2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.</p> <p>3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed. For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions.</p> <p>4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.</p> | <p>Article III-329 "Implementation of the solidarity clause"</p> <p>Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.</p> <p>2. The arrangements for the implementation by the Union of the solidarity clause referred to in Article I-43 shall be defined by a European decision adopted by the Council acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs. The Council shall act in accordance with Article III-300(1) where this decision has defence implications. The European Parliament shall be informed. For the purposes of this paragraph and without prejudice to Article III-344, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article III-261; the two committees shall, if necessary, submit joint opinions.</p> <p>3. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.</p> | | | |
| <p>Protocol (No 2) on the application of the principles of subsidiarity and proportionality</p> | <p>2. Protocol on the application of the principles of subsidiarity and proportionality</p> | | | |
| <p>Article 5</p> <p>Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. [...] The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. [...]</p> | <p>Article 5</p> <p>Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. [...] The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. [...]</p> | <p>--</p> | <p>--</p> | <p>--</p> |



| Protocol (No 10) on Permanent Structured Cooperation established by Article 42(6) and Article 46 of the Treaty on European Union | 10. Protocol on Permanent Structured Cooperation established by Article I-41(6) and Article III-312 of the Constitution | | | |
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| <p>The High Contracting Parties, [...] have agreed upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:</p> <p>Article 1</p> <p>The permanent structured cooperation referred to in Article 42(6) of the Treaty on European Union shall be open to any Member State which undertakes, from the date of entry into force of the Treaty of Lisbon, to:</p> <p>(a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and</p> <p>(b) have the capacity to supply by 2010 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article 43 of the Treaty on European Union, within a period of five to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.</p> <p>Article 2</p> <p>To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:</p> <p>(a) cooperate, as from the entry into force of the Treaty of Lisbon, with a</p> | <p>The High Contracting Parties, [...] have agreed upon the following provisions, which shall be annexed to the Constitution:</p> <p>Article 1</p> <p>The permanent structured cooperation referred to in Article I-41(6) of the Constitution shall be open to any Member State which undertakes, from the date of entry into force of the Treaty establishing a Constitution for Europe, to:</p> <p>(a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and</p> <p>(b) have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article III-309, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.</p> <p>Article 2</p> <p>To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:</p> <p>(a) cooperate, as from the entry into force of the Treaty establishing a</p> | <p>--</p> | <p>--</p> | <p>--</p> |

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| <p>view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;</p> <p>(b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;</p> <p>(c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;</p> <p>(d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the 'Capability Development Mechanism';</p> <p>(e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.</p> <p>Article 3</p> <p>The European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, inter alia, on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and decisions adopted in accordance with Article 46 of the Treaty on European Union.</p> | <p>Constitution for Europe, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;</p> <p>(b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;</p> <p>(c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;</p> <p>(d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the 'Capability Development Mechanism';</p> <p>(e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.</p> <p>Article 3</p> <p>The European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, inter alia, on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and European decisions adopted in accordance with Article III-312 of the Constitution.</p> | | | |
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| Declaration 13 concerning the common foreign and security policy | | | | |
| <p>The Conference underlines that the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.</p> <p>The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.</p> <p>It stresses that the European Union and its Member States will remain bound by the provisions of the Charter of the United Nations and, in particular, by the primary responsibility of the Security Council and of its Members for the maintenance of international peace and security.</p> | -- | -- | -- | -- |
| Declaration 14 concerning the common foreign and security policy | | | | |
| <p>In addition to the specific rules and procedures referred to in paragraph 1 of Article 24 of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the United Nations.</p> <p>The Conference also notes that the provisions covering the Common Foreign and Security Policy</p> | -- | -- | -- | -- |

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| <p>do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament. The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.</p> | | | | |
| <p>Declaration 15 on Article 27 of the Treaty on European Union</p> | | | | |
| <p>The Conference declares that, as soon as the Treaty of Lisbon is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States should begin preparatory work on the European External Action Service.</p> | -- | -- | -- | -- |
| <p>Declaration 18 in relation to the delimitation of competences</p> | | | | |
| <p>[...] When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence.</p> | -- | -- | -- | -- |



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